Staff Briefing

Connecticut's Whistleblower Law

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Legislative Program Review
& Investigations Committee

CONNECTICUT GENERAL ASSEMBLY

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Introduction

Connecticut's Whistleblower Law

In May 2009, the Legislative Program Review and Investigations Committee voted to undertake a study of *Connecticut's Whistleblower Law*. The focus of this study is on the process and structure currently in place to handle whistleblower complaints within state government. In particular, the study will evaluate the approach taken by the appointed agencies to review whistleblower complaints including their statutory authority, timeframes, and reporting of outcomes.

The term "whistleblower" generally refers to someone who calls attention to wrongdoing that is occurring within an organization. Societal opinions about whistleblowers vary considerably. Whistleblowers are often viewed by some as 'saviors' or 'heroes' who ultimately help bring about important changes in organizations but sometimes they are seen as 'traitors' who are not team players. Depending on the allegations, whistleblowers can also be perceived as 'crazy' or simply seeking attention. These potential labels often make individuals reluctant when making the decision whether to come forward with information. While some whistleblowers are praised for their courage or ideals, others are ostracized, marginalized, or even forced out of an organization by those who feel threatened by the revelations.

The literature on the subject is filled with anecdotes of organizations finding many ways of dealing with disfavored employees. While some may get fired, there is also the possibility or threat that whistleblowers may suddenly find themselves either transferred to an undesirable location, deprived of their regular responsibilities or promotions, segregated from their colleagues, or subjected to hostile or unacceptable work conditions. In some cases, where a disclosure may embarrass or hurt the organization's image or ability to continue to operate, the organization's management may, instead of focusing on the alleged irregularities, concentrate its attention on the whistleblowers in an effort to silence or discredit them.

On the other hand, it is also important to acknowledge that some whistleblowers have less than honorable motives. In some situations a whistleblower disclosure may be a genuine detriment to the organization since the information may be false. In other circumstances, individuals may be motivated by personal agendas or creating a smokescreen to thwart an adverse personnel action that may be taken against them. Therefore, an organization may have a legitimate concern that an individual may try to use available whistleblower protections to avoid justified charges of incompetence or inadequate job performance.

Connecticut's whistleblower law regarding state government (C.G.S. § 4-61dd, referred to as the Whistleblower Act) allows anyone, including state employees, to report specific kinds of agency misconduct to the state Auditors of Public Accounts and the Attorney General for

investigations.[1] By law, the identity of the whistleblower cannot be disclosed and employers are prohibited from taking or threatening to take any personnel action against an employee who discloses information pursuant to the whistleblower statute. Recent public hearing testimony and legislative proposals raised issues regarding the implementation of the whistleblower law and the statutory protections afforded to whistleblowers. In particular, changes have been proposed to: expand the role of the State Auditors and Attorney General in whistleblower retaliation claims; extend the filing period for retaliation complaints from 30 to 90 days; increase the rebuttable presumption time period from 1 year to three that adverse personnel action taken after a whistleblower disclosure is retaliation; and allow temporary relief to complainants while retaliation complaints are pending.[2]

In their 2008 annual report, the Auditors of Public Accounts state that they received 151 whistleblower complaints during FY 2008 on matters such as misuse of state funds, harassment, conflicts of interest, and improper investigations. The Auditors specifically noted a substantial increase in the number of claims filed regarding agency retaliation against whistleblowers during this same time period.

Report Organization

The primary purpose of this report is to describe to the committee the methods and processes currently in place to examine whistleblower complaints within state government. This report is divided into four sections. Section I provides background information on Connecticut's whistleblower law and presents an overview of the current organizational and staffing resources dedicated to its implementation. Section II explains the whistleblower process including the specific roles, responsibilities, and activities of the Auditors of Public Accounts and the Office of the Attorney General. The section also provides preliminary trend analysis on the number, types, and processing times of whistleblower complaints. Section III reviews current statutory protections against retaliation for whistleblowers. Finally, Section IV summarizes the approach used by the federal government to address whistleblower complaints.

[1] Another state law protects private employees and prevents retaliation against any employee who reports his employer's illegal conduct to the proper authorities or who participates in an investigation of illegal conduct (C.G.S. § 31-51m). C.G.S. §31-51q bars employer retaliation against employees for exercising their constitutional rights.

[2] The Government Administration and Elections Committee raised legislative proposals in 2009 (Senate Bill 768) and 2008 (Senate Bill 335) concerning the protection of whistleblowers.

Section I

Background on Whistleblower Laws

During the 1970s, public confidence in both the legislative and executive arms of the federal government dropped considerably. Significant media attention to numerous events including Watergate, defense cost overruns, unsafe nuclear power plant conditions, questionable drugs approved for marketing, contract illegalities, and other regulatory corruption contributed to this decline.[3] In partial response to such reports, Congress passed the Civil Service Reform Act in 1978 (CSRA) to protect the rights of government employees who reported wrongdoing.

A fundamental principle of the CSRA was the idea that whistleblowers can play a legitimate role in ensuring the integrity and efficiency of government, and that the protection of the whistleblowers was essential to the improvement of public service. The intent of these provisions was to foster government efficiency by creating a climate where employees felt secure in bringing problems to the attention of officials who could solve them.

This federal legislation served as a model for Connecticut's original whistleblower policy. Although the state's 1979 bill ultimately passed, the chamber discussions ranged from unequivocal support for the concept as a way to solve many problems on matters involving unethical practices and corruption to a view that the law was wholly unnecessary. The remarks in the Senate chamber revealed some of the hesitation on the part of a few members:

> "…A bill of this nature though supposedly well-founded, I feel that this bill is very dangerous and undemocratic. What we're saying here, Members of the Circle, for those that are listening, we're saying that the department heads and supervisors are unable to do their jobs, but we're further saying is that state employees are not doing their work. If we pass a bill like this, what is the next step? Are we saying that we should set up some electronic surveyance [sic] when these employees aren't super-sleuthing watching one another?.." (Senator Anthony Ciarlone)[4]

> "…I'm concerned about the kind of climate this is going to create in our state agencies where we're going to have employees looking over their shoulders, going to have other employees looking into the affairs of their colleagues. I think it's going to create an unhealthy atmosphere, Mr. President, and I don't believe that there's been a demonstrated need for this. This is the kind of symbolic legislation that we seem to be in love with…" (Senator Eugene Skowronski,)[5]

[3] The Whistleblowers: A Report on Federal Employees Who Disclose Acts of Governmental Waste, Abuse, and Corruption, prepared for the Senate Committee on Governmental Affairs, 95th Cong. 2nd sess. 1 (Comm. Print, Feb. 1978)
[4] Transcripts of Senate Proceedings, June 4, 1979, p. 5645
[5] Ibid, p.5647

In response, Senator Clifton Leonhardt stated:

> "…I rise to support this legislation which on one hand will protect civil liberties and state employees at the same time as it promotes efficiency in state government. I think it's very important that state employees who come across malfeasance or inefficiencies or incompetence be encouraged to report these wrong-doings to their superiors and so that they won't have the threat of losing their jobs as a result of bringing to light wastes of the taxpayer's money and in that respect I think this legislation will increase efficiency in state government… (a)ll this legislation and bill has been adopted at the federal level." [6]

Connecticut's evolving policy on whistleblower matters is illustrated in the legislative history of C.G.S.§4-61dd, the state's Whistleblower Act. Connecticut's whistleblower law was first established with the passage of Public Act 79-599. Over the years, the statutory authority, responsibilities, roles, and duties of the entities involved in handling whistleblower information has changed, at times dramatically. The following provides a brief overview of these changes and sets out the state's current structure to examine whistleblower complaints within state government.

Legislative history. Figure I-1 outlines the major milestones in the development of Connecticut's whistleblower statute. (A complete legislative history is provided in Appendix A.) As the figure shows, the state's initial approach placed the responsibility for whistleblower matters solely within the Office of the Attorney General. The Attorney General was authorized to investigate information submitted to him by state employees alleging misconduct in any state department or agency. Upon conclusion of an investigation, the Attorney General used his discretion whether to report his investigative findings to the Governor, or to the Chief State's Attorney in matters involving criminal activity.

In the early 80's, the law was revised to allow former state employees or a state employees' bargaining representative to bring allegations to the Attorney General. Whistleblower protection against retaliation by any agency employee was enacted and the Attorney General was required to report to the complainant, upon request, the outcome of the investigation. In addition, agencies were allowed to take disciplinary action, including dismissal, against employees who knowingly and maliciously made false allegations.

In 1985, Connecticut changed its approach to handling whistleblower complaints. The legislature created the Office of Inspector General and transferred all responsibilities to conduct whistleblower investigations from the Attorney General to the new Inspector General. Given significantly broad authority, the Inspector General's other powers and duties included:

- detecting and preventing fraud, waste, and abuse in state personnel and property, and state and federal funds,
- evaluating the economy, efficiency, and effectiveness of state agencies,

[6] Ibid, p. 5648

- investigating the administration of public funds and state-owned or leased property, and state agency performance,
- having access to all agency records, and
- reporting findings and recommendations to the Governor, General Assembly, the legislative program review committee, Chief State's Attorney, State Ethics Commission, Attorney General, U.S. Attorney, and appropriate municipal authorities.

Another change at this time was the statutory requirement that any records and information used in investigations must remain confidential until such investigations were concluded. (A full description of Connecticut's former Office of the Inspector General is provided in Appendix B.)

Two years after its creation, the legislature eliminated the Office of the Inspector General in 1987 and returned all whistleblower functions to the Office of the Attorney General but added the state Auditors of Public Accounts to the process. In addition, the whistleblower law was amended to allow anyone, not just former/current state employees, to submit complaints of misconduct by state entities. However, the provision requiring that investigative results be reported to the complainant upon request was eliminated. The Auditors were required to submit an annual summary report of instances of wrongdoing to the legislature.

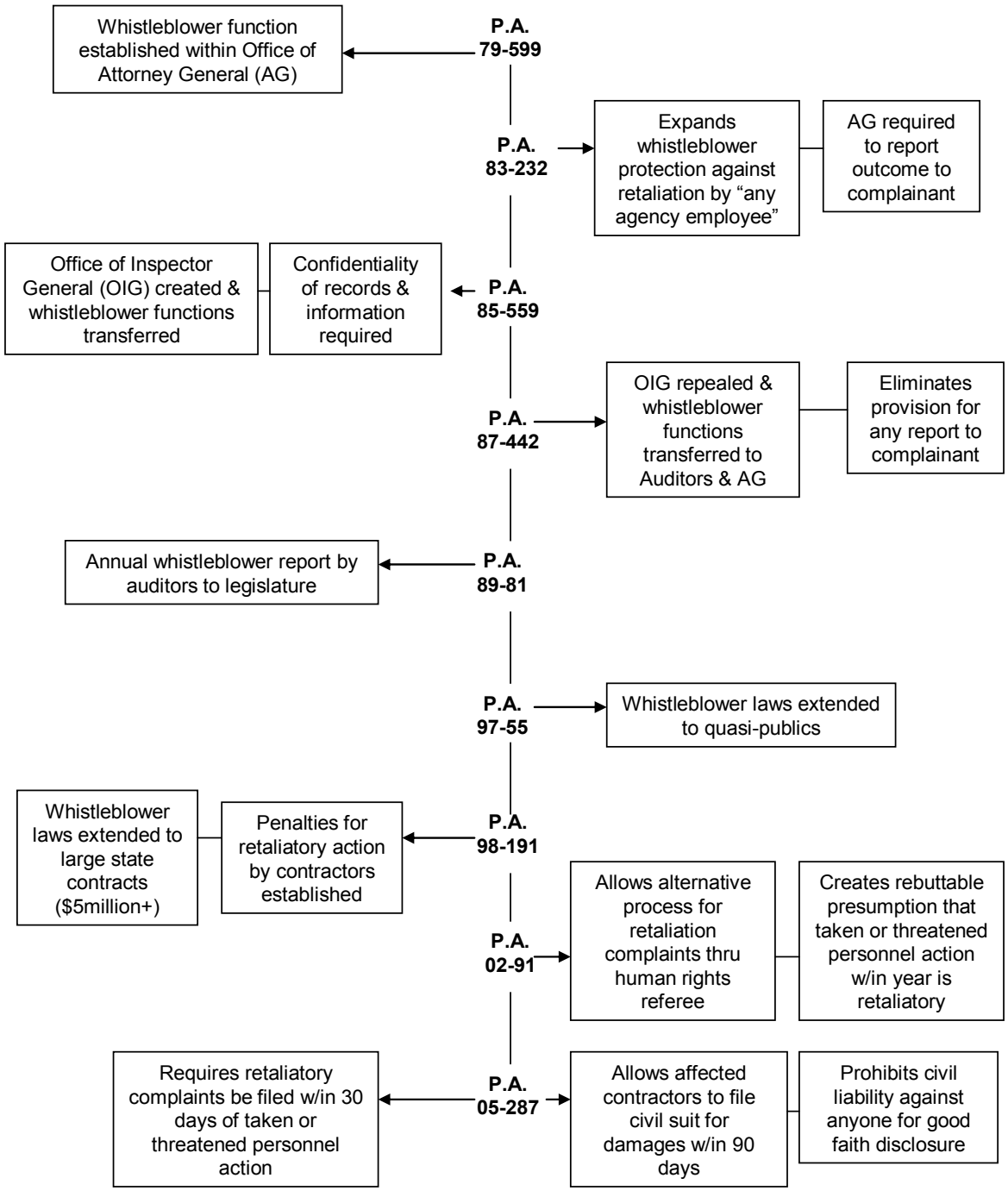
This configuration for managing whistleblower complaints remained in place without significant change until the late 1990s. At that time, the whistleblower law was extended to apply to quasi-public entities (1997) and large state contractors (1998) (defined as having state contracts valued at $5 million or more).[7] Employees of quasi-public agencies and large state contractors were afforded the same whistleblower protection against retaliation as state employees. In addition, any large state contractor who retaliates against whistleblowers faces a civil penalty of up to $5,000 for each offense, up to a maximum of 20 percent of the contract's value, for each threatened or actual retaliatory action against a whistleblower.

Since 2000, the major changes to the whistleblower law include expansion and amendments to the provisions providing protection against retaliation including the use of the Chief Human Rights Referee for retaliation complaints. (Discussion on this topic is provided in further detail in Section III.) Another significant change made to the whistleblower statute in 2005 was the elimination of exempting large state contracts involving public works from whistleblower matters.

Appendix C provides a complete copy of the current statutory provisions of Connecticut General Statutes §4-61dd.

[7] State contracts to construct, alter, or repair public buildings or public works were excluded from the definition of large state contracts.

Figure I-1. Legislative History of Whistleblower Law



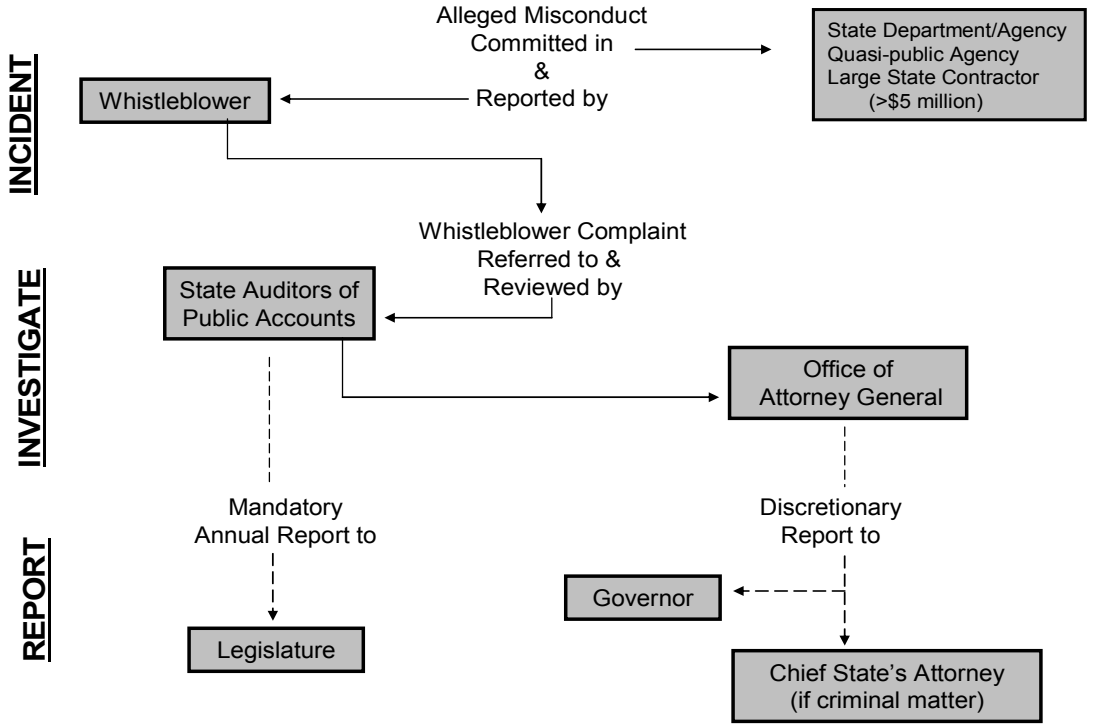
Source: LPR&IC

Connecticut's Current Approach to Whistleblower Matters

As noted earlier, Connecticut's approach to where responsibility for handling whistleblower matters resides has varied since the law's initial passage. Currently, the statutory authority, powers, and duties are charged to the Auditors of Public Account and the Office of the Attorney General. In addition, other public entities/officials may be involved depending on the type of whistleblower matter. Figure I-2 provides a broad schematic of the potential interested parties in a whistleblower complaint.

As the figure illustrates, the primary functions of the State Auditors and the Attorney General regarding whistleblower matters is to investigate and report. Neither the State Auditors nor the Attorney General has the authority to issue any binding orders to agencies, quasi-public agencies or state contractors, or officials or employees of such entities. Nor can they provide relief in the form of damages/compensation or any other restitution to individual whistleblowers. Whistleblowers alleging retaliation may submit their complaints to the State Auditors and/or the Attorney General for investigation; however, any individual relief for personnel issues (e.g., hiring, firing, promotion, back pay) must be sought through alternative routes such as employee grievance proceedings, the Chief Human Rights Referee, or court action. These alternatives as they relate to whistleblower retaliation complaints are explored further in Section III.

Figure I-2. Parties Involved in Whistleblower Matters Pursuant to C.G.S. §4-61dd(a)



Source: LPR&IC

Generally, the state's Whistleblower Act allows anyone who knows of any misconduct occurring in any state agency, quasi-public agency, or large state contract to submit a whistleblower complaint. Statutorily, quasi-public agencies include the Connecticut Development Authority; Connecticut Innovations, Incorporated; Connecticut Health and Educational Facilities Authority; Connecticut Higher Education Supplemental Loan Authority; Connecticut Housing Finance Authority; Connecticut Housing Authority; Connecticut Resources Recovery Authority; Capital City Economic Development Authority; and Connecticut Lottery Corporation.

In addition, a large state contractor is statutorily defined as an entity that enters into at least a $5 million contract with a state or quasi-public agency. Each state contract over $5 million must include a provision informing the contractor that he faces a civil penalty of up to $5,000 for each offense, up to a maximum of 20 percent of the contract's value, for each threatened or actual retaliatory action against a whistleblower by an officer, employee, or appointing authority within his company.

As Figure I-2 shows, the Auditors of Public Accounts have the first mandated review of all whistleblower matters. The State Auditors must report their findings to the Attorney General, who has the discretion to conduct such further investigation as he deems proper. In his discretion, the Attorney General reports his findings to the Governor and to the Chief State's Attorney, if the matter involves a crime. The State Auditors are statutorily required to annually report to the legislature the numbers and disposition of matters submitted pursuant to the whistleblower statute.

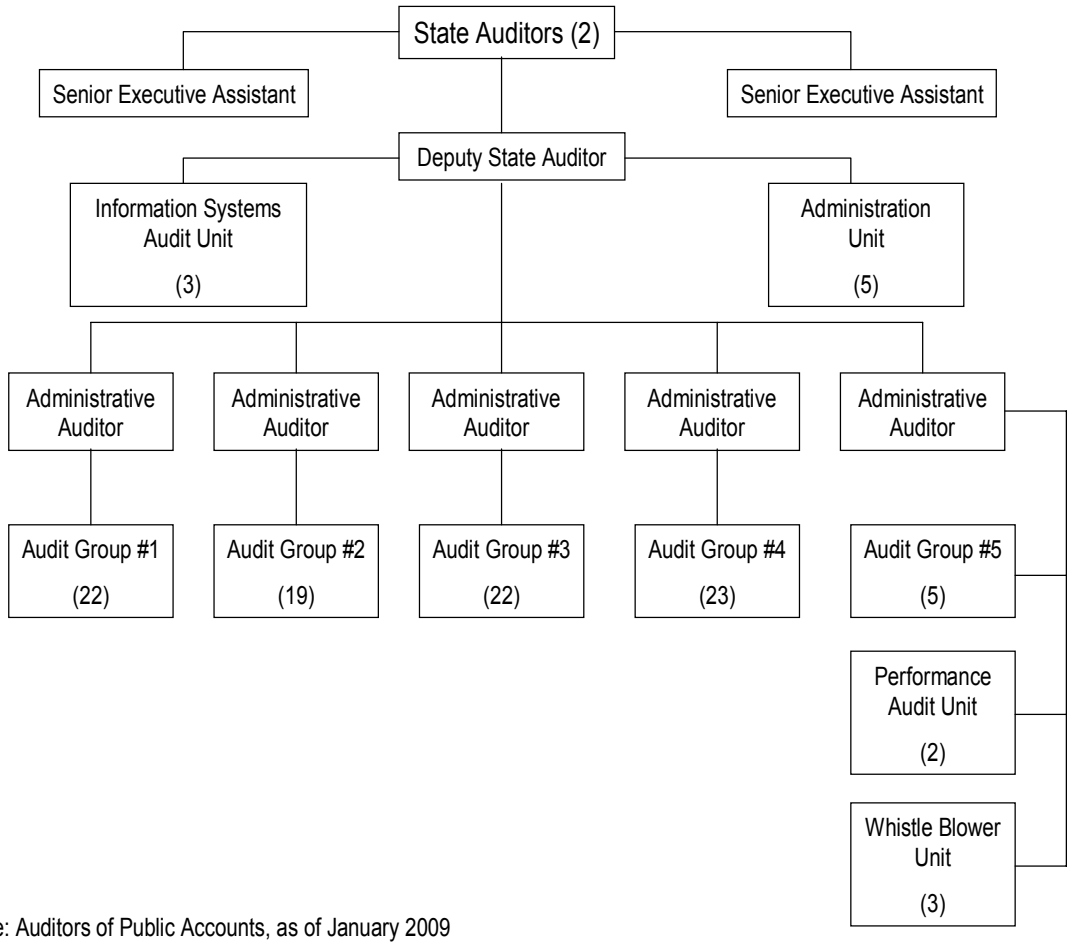
Auditors of Public Accounts (APA)

The primary responsibility of the Auditors of Public Accounts is to audit the books and accounts of each officer, department, commission, board, and court, of the state government, as well as all state-aided institutions and certain quasi-public agencies created by the legislature (C.G.S. § 2-90). The auditors also perform a Statewide Single Audit of federal programs to ensure federal funds provided to the state are used in compliance with applicable laws, rules and regulations. Other statutory responsibilities include to review all whistleblower complaints filed against the state and report the results to the Attorney General and to conduct annual compliance audits of certain quasi-public agencies and trust accounts maintained by state marshals. The Auditors are expected to provide independent, unbiased, and objective opinion and recommendations on the operation of the state government and the state's effectiveness in safeguarding resources.

Organization and staffing. Figure I-3 shows the organizational structure and staffing levels of the Office of the Auditors of Public Accounts. The office is directed by two legislatively appointed State Auditors, one from each political party, and currently has a total of 113 employees. The audit operations staff is overseen by a deputy state auditor and is organized into five audit groups. Until recently, there was only one full-time auditor assigned to whistleblower matters. According to the State Auditors, the office has needed to shift staff resources and assignments in order to manage the increasing number and complexity of the

whistleblower matters submitted. The Whistleblower Unit currently consists of three auditors and is under the general direction of one of the five administrative auditors. When necessary or practical, auditors from the various audit groups may be asked to assist in reviewing whistleblower complaints.

Figure I-3. Auditors of Public Accounts: Organizational Structure & Staffing



Source: Auditors of Public Accounts, as of January 2009

Office of the Attorney General

As the chief civil legal officer of the state, the Attorney General serves as legal counsel to all state agencies. The state constitution and state law authorize him to represent and protect the public interest of the state's citizens. Among the various responsibilities of the Attorney General are the duties to maintain general supervision over all legal matters in which the state is an

interested party. The office represents all state officials in all suits and other civil proceedings in which the state is a party, or has an interest, or in which the official actions of state officers are called into question, except in criminal matters.

In addition to representing state officials and agencies, the Attorney General is also charged with the responsibility to investigate alleged misconduct by state entities/officials pursuant to the Whistleblower Act. The dual responsibilities of investigating and then potentially representing a state entity/official for the alleged wrongdoing may create an appearance of a conflict of interest. In practice, however, these investigatory and representation functions are segregated. Further discussion on the "firewalls"[8] used to avoid conflict of interest problems is provided later.

Organization of the Office of the Attorney General. Figure I-4 outlines the organizational structure for the Office of the Attorney General. With a staff of more than 300, the Office of the Attorney General consists of 14 designated departments including:

- Antitrust
- Child Protection
- Environment
- Finance and Public Utilities
- Employment Rights
- Public Safety and Special Revenue
- Transportation
- Special Litigation
- Collections and Child Support
- Health and Education
- Workers' Compensation and Labor Relations
- Consumer Protection
- Health Care Fraud/Whistleblower/Health Care Advocacy
- Civil Rights and Torts

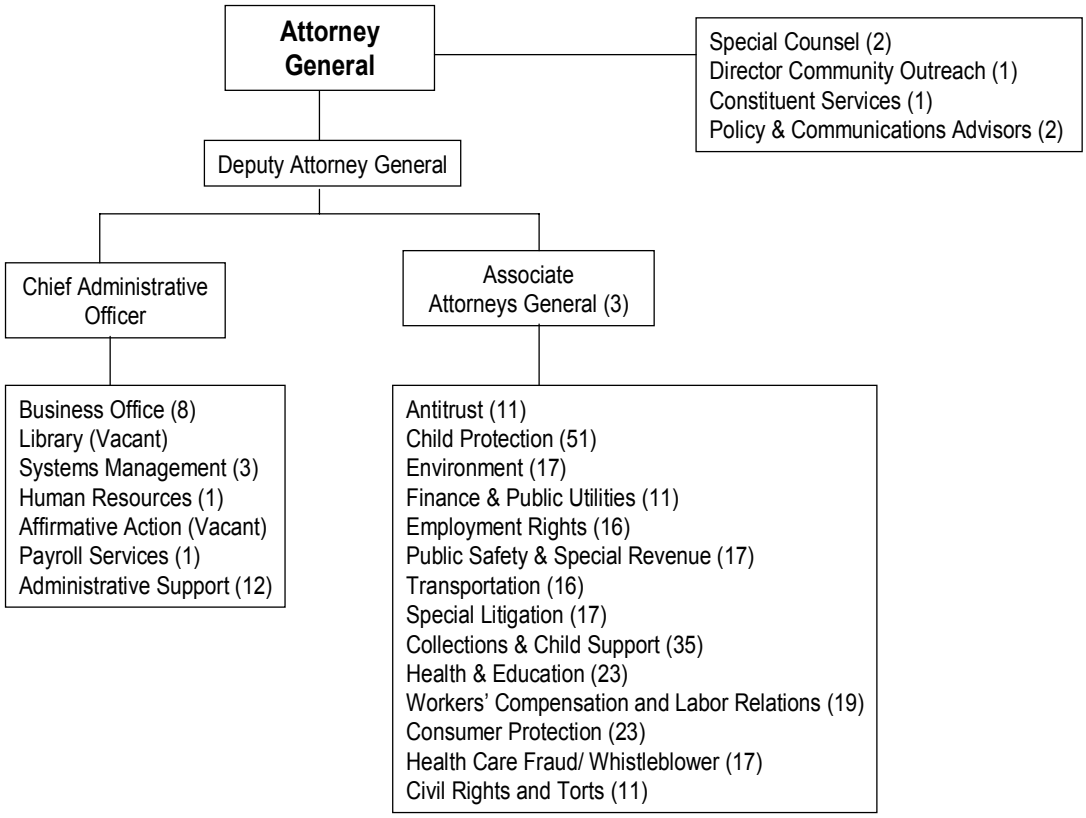
Whistleblower Unit within the Office of the Attorney General. The Whistleblower Unit is a distinct unit located within the Health Care/Whistleblower/Health Care Advocacy department. As Figure I-4 shows, the department has 17 assigned staff including administrative support. There is one staff attorney designated as whistleblower coordinator who works with the department head on reviewing all whistleblower complaints.

The Attorney General's Whistleblower Unit reviews and investigates matters referred to it by the State Auditors or others. Although state law authorizes the Attorney General to investigate whistleblower complaints, including claims of retaliation, he cannot provide legal advice or counsel to the employee. As discussed earlier, whistleblowers must seek individual

[8] The term "firewalls" refers to an information barrier implemented within an organization to separate and isolate persons who make decisions from persons who are privy to undisclosed material information which may influence those decisions.

relief for personnel issues through alternative grievance proceedings. It should be noted that staff from other departments within the Office of the Attorney General may also be involved in those alternative grievance proceedings or related litigation.

Figure I-4. Office of the Attorney General: Organizational Structure and Staffing



Source: Office of Attorney General, as of August 2009

Section II

Connecticut's Whistleblower Law and Process

This section provides an overview of Connecticut's whistleblower law and a detailed description of the whistleblower process within the Offices of the Auditors of Public Accounts and the Attorney General. Information on the whistleblower retaliation protection provisions is set out in Section III.

Whistleblower Statute (C.G.S. § 4-61dd (a))

State law allows anyone with knowledge of any matter occurring in any state or quasi-public agency involving: 1) corruption, 2) unethical practices, 3) violation of state laws or regulations, 4) mismanagement, 5) gross waste of funds, 6) abuse of authority, or 7) danger to the public safety to report all facts and information to the Auditors of Public Accounts.

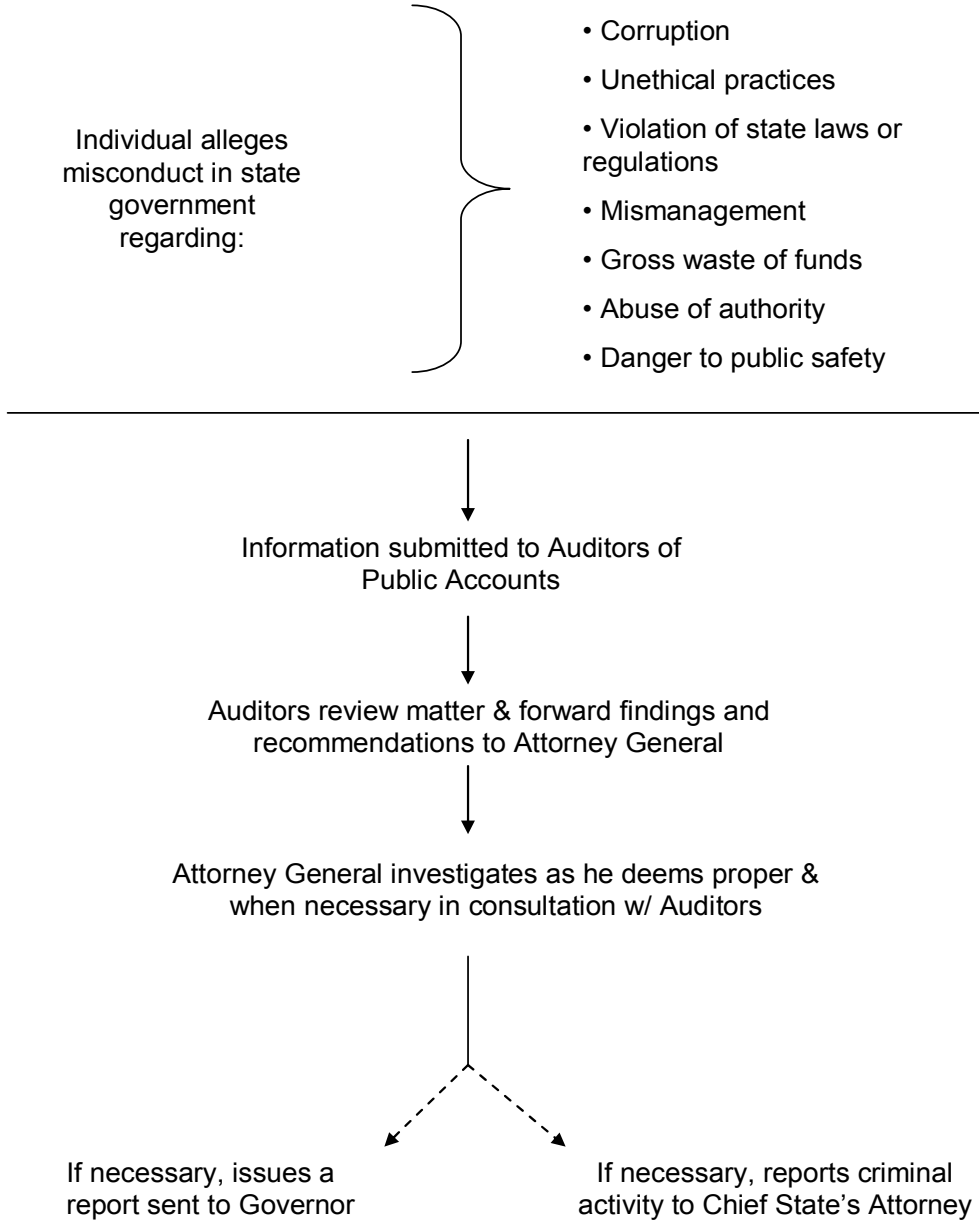
Any person with knowledge of any matter occurring in any large state contract of $5 million or more involving: 1) corruption, 2) violation of state laws or regulations, 3) gross waste of funds, 4) abuse of authority, or 5) danger to the public safety may also submit all facts and information possessed by the person about the matter to the State Auditors.

The Auditors must review the matter and report their findings and any recommendations to the Attorney General. An overview of this statutory scheme is shown in Figure II-1 while a breakdown of each agency's whistleblower process is outlined in subsequent flowcharts. As Figure II-1 shows, after receiving the Auditors' report, the Attorney General "shall make such investigation as he deems proper regarding the report and any other information that may be reasonably inferred from such report." The Attorney General may conduct any subsequent investigation he deems appropriate, and if the information is derived from the Auditors' report, with the concurrence and assistance of the Auditors.

The Auditors may on their own initiative, or at the request of the Attorney General, assist in the investigation. If necessary, the Attorney General has the power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses. When the investigation is complete, the Attorney General may report any findings to the Governor or to the Chief State's Attorney in matters of criminal activity. The statutory provisions for the Auditors' and Attorney General's whistleblower processes do not impose any timeframes or deadlines.

Neither the State Auditors nor the Attorney General can disclose the person's identity without the person's consent unless the Auditors or the Attorney General determines disclosure is unavoidable. In addition, each office may withhold records of the investigation while the investigation is pending. The state Freedom of Information law also exempts whistleblower records and the name of an employee providing information from mandatory disclosure. C.G.S. § 1-210(b)(13).

Figure II-1. Statutory Process for Whistleblower Complaints



Source: LPR&IC

Auditors of Public Accounts Whistleblower Complaint Process

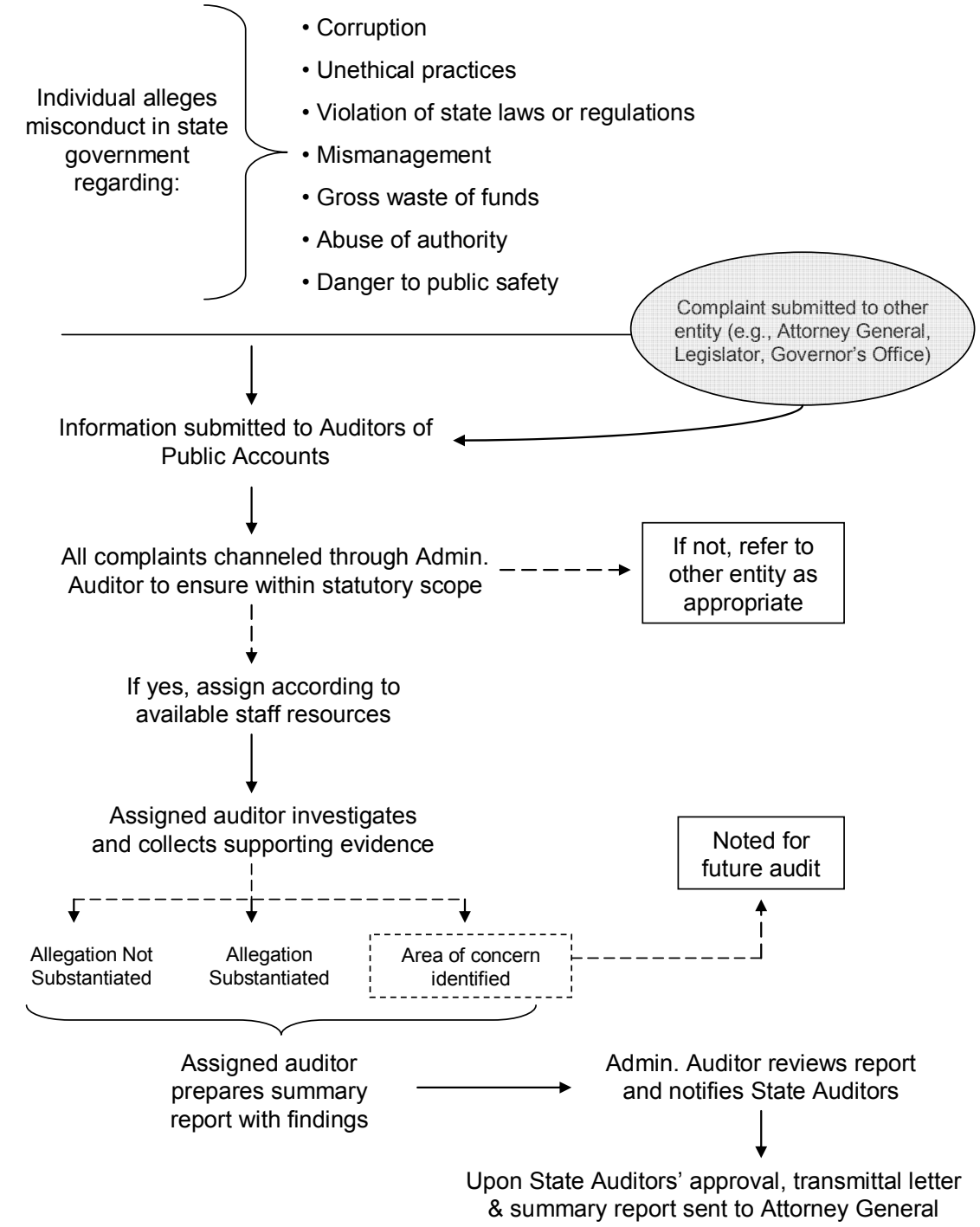
Statutorily, the whistleblower process begins when anyone with information concerning matters involving alleged misconduct by a state agency, quasi-public, or large state contractor submits a complaint with the Auditors of Public Accounts. In practice, however, the Office of the Attorney General frequently receives whistleblower complaints first. In these instances, the Attorney General's office will re-route the whistleblower information to the Auditors for the mandated first review. At times, whistleblowers also may initially submit complaints to other officials such as the Governor or legislators who may refer the complaint or complainant to the State Auditors.

As Figure II-2 reveals, all whistleblower information submitted to the Auditors is initially channeled through the administrative auditor managing the APA's Whistleblower Unit. A complaint may be submitted by mail, by phone, electronically, or in person. The administrative auditor conducts the first review of the whistleblower complaint. If possible, the administrative auditor determines the name and title of the person or persons involved in the misconduct, the identity of the state entity the subject of the complaint involves, and as much information regarding the misconduct as possible including names of witnesses. A written statement from the complainant is not required. Complainants may submit information anonymously, if they prefer. Because some complainants may not wish to be identified, they may decide not to provide any contact information, which may limit the auditor's ability to follow up on allegations. Therefore, the auditor must proceed with the information as submitted.

Intake. The administrative auditor first determines whether the submitted whistleblower information falls within the statutory realm of C.G.S §4-61dd. Specifically, the administrative auditor is checking that the information submitted concerns a matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority, or danger to the public safety. In addition, the allegation must involve a state department/agency, quasi-public agency, or a large state contract valued at least $5 million. If the information received is deemed not to fall within the scope of the whistleblower statute but in the administrative auditor's opinion merits further review, the office may review the matter as part of a general audit of the implicated agency. At times, the individual may be referred to another entity if the matter involves parties (e.g., municipal employees) not subject to the state's Whistleblower Act.

Once the administrative auditor decides that the information provided should be handled as a whistleblower complaint, it will be logged, given a file number, and assigned to a staff member. Assignments are made based on available staff resources and not always immediately made. Until recently, the unit had one full-time auditor assigned to whistleblower complaints. Currently, there are three auditors specifically assigned to handle whistleblower matters. However, depending on the nature of the complaint and/or other workload issues, the complaint may be given to an auditor who is either conducting or about to conduct a routine audit in the implicated agency or has knowledge or experience in the particular agency topic. According to the State Auditors, this resource allocation can delay whistleblower assignments.

Figure II-2. Whistleblower Process within Auditors of Public Accounts



Source: LPR&IC

Investigations. The administrative auditor informs the deputy state auditor as well as the State Auditors of whistleblower matters assigned for further investigation. Generally, complaints are investigated in the order they are received and are subject to staff availability. On occasion, certain complaints may be found to merit immediate attention if, for example, it involves danger to public safety.

The administrative auditor prepares an initial complaint folder supplying the assigned auditor with the details provided by the complainant including any submitted documentation. Given the varying characteristics of each reported incident, there is no single approach to whistleblower investigations. Each complaint is considered and handled on a case-by-case basis. Typically, the assigned auditor will develop an approach outlining the action steps to be taken for each allegation. Guidance is also given by the administrative auditor throughout the review.

Occasionally, an APA staff member is approached during a routine audit by a potential whistleblower. The APA policy requires the audit staff member to refer that individual to the whistleblower statute and encourage them to submit a written complaint or telephone the Auditors' office. If the individual does not wish to formally contact the office, the staff member may inform their administrative auditor through a written memo to the Auditors describing the situation. Prior to submitting a memo, the staff auditor may try to determine whether or not the complaint has any merit.

In all cases, the assigned auditor will do some preliminary background work by gathering as much information as possible without revealing the whistleblower investigation unless it is necessary to obtain the information. However, the identity of the whistleblower is maintained confidential. In fact, most contact with the whistleblower is primarily handled by the administrative auditor to further protect confidentiality.

APA guidelines stress the importance of documentation of all information that is being gathered during the whistleblower review. All interviews must be documented as to date, time, and persons who attended. Interviews expected to produce critical or sensitive information should be conducted in the presence of a second auditor. In addition, conversations with complainants and other parties must be documented as to the date, time, and issues discussed. Work paper documentation also includes any information received from another staff auditor or from a supervisor.

Confidentiality is an essential aspect of the APA guidelines for handling whistleblower complaints. While conducting an investigation, the assigned auditor can only disclose to the agency what is necessary to obtain the information needed for the review. All materials collected during any review must be safeguarded and the identities of the whistleblower complainant and other confidential informants are protected at all times. Information pertaining to a whistleblower case file is exempt from disclosure under the Freedom of Information statutes. The State Auditors have discretionary authority over what information, if any, may be released to the whistleblower complainant, the agency, or any third party such as union representatives or media. If an investigating auditor believes that a review may directly or indirectly disclose a complainant's identity, the situation must be discussed with the State Auditors before proceeding further.

As part of the investigation, the assigned auditor may use a variety of available resources including but not limited to:

- records and data from the state entity being investigated;
- employee earnings and vendor payments from the Office of the Comptroller;
- information regarding purchasing, fleet operations, agency billings, and telecommunications services from the Department of Administrative Services;
- registrations, licenses, and complaints against businesses from the Department of Consumer Protection;
- corporate status and listing of corporate officers and directors from the Secretary of State;
- information on state leased properties and capital projects from the Department of Public Works; and
- various information available from town/city clerks of municipal offices such as land ownership, property values and assessments.

Summary reports. Upon completing the investigation, the assigned auditor prepares a summary report of findings related to each allegation of the complaint. The findings may include the auditor's conclusion whether or not there was evidence substantiating the complaint or, if not substantiated, whether areas of concern were raised that may be noted for review during future general audits. All supporting documentation is maintained as part of the case file. The summary report is submitted to the auditor's managing administrative auditor for review. All summary reports and supporting documentation is also reviewed by the Whistleblower Unit's administrative auditor. The unit administrator determines if further review is needed, makes any editorial changes, and forwards the report to the State Auditors. With the State Auditors' approval, a transmittal letter is prepared and the summary report forwarded to the Attorney General. Regardless of the report's substantiated or un-substantiated findings, all whistleblower matters reviewed by the Auditors are referred to the Office of the Attorney General.

According to the State Auditors, formal updates to the complainant regarding the status of the whistleblower matter are not provided unless the complainant contacts the office. In all cases, the APA policy is only to state if and when the whistleblower matter has been referred to the Office of the Attorney General and direct any follow-up with that office.

Office of the Attorney General Whistleblower Complaint Process

Similar to the State Auditors, the Attorney General is statutorily responsible for reviewing all whistleblower information regarding alleged misconduct within state government. The statutory language, however, provides the Attorney General discretion to pursue whistleblower investigations as he "deems proper" (C.G.S.§ 4-61dd(a)). Serving as the state's chief civil legal officer, the Attorney General is a widely recognized and visible position within state government. As such, the office generates much public interest and communication. This may be why frequently the office will receive whistleblower complaints before the Auditors of

Public Accounts, who are statutorily charged with reviewing whistleblower matters first. Figure II-3 illustrates the process in the Attorney General's office upon receipt of whistleblower information.

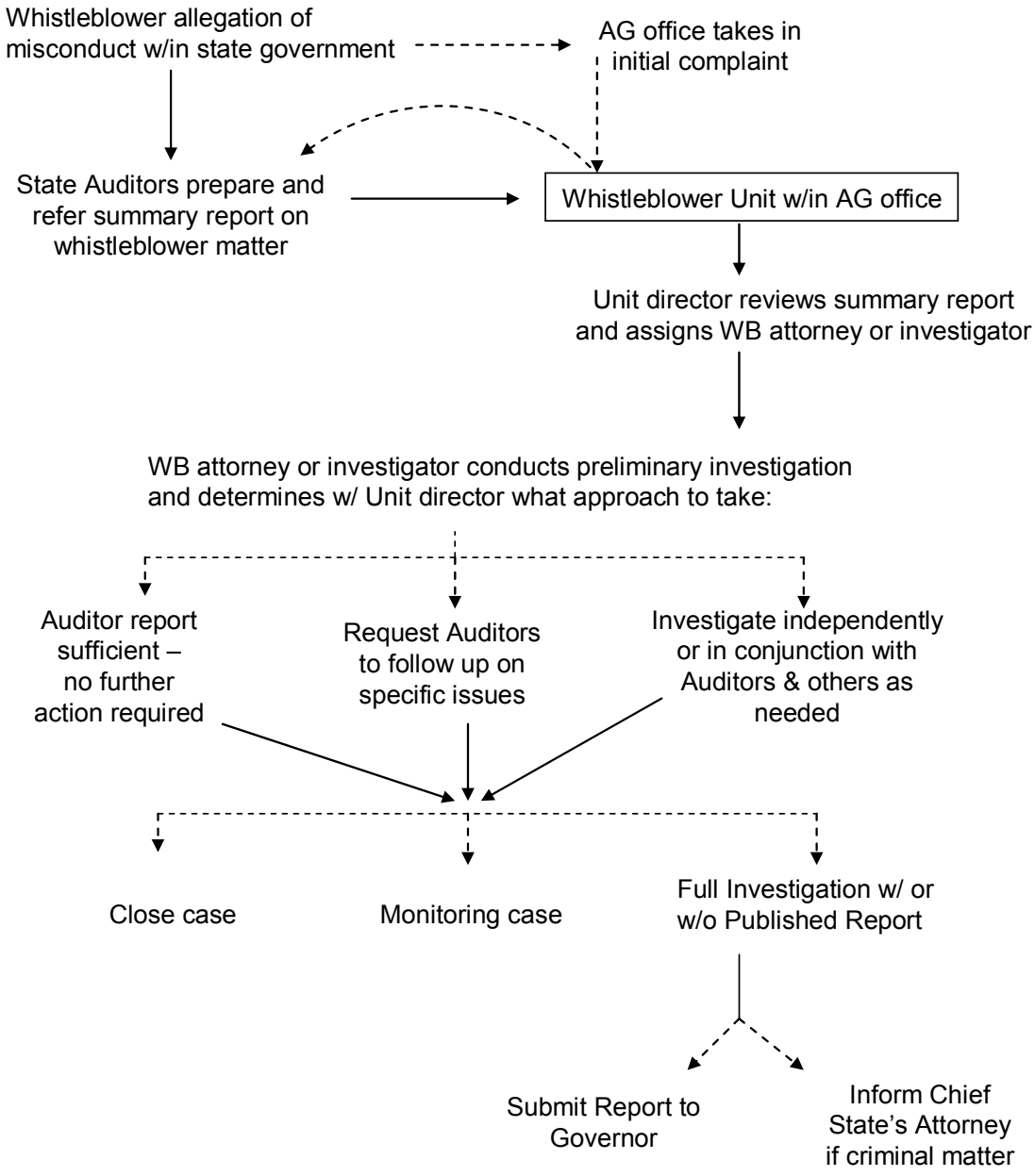
Receipt of complaints. According to the Attorney General's staff, the office receives allegations of misconduct within state government in a variety of ways including by mail, telephone, e-mail, or in-person. Often, letters are addressed to the Attorney General containing such allegations. If the outside of the letter contains a reference to a whistleblower complaint, the letter will be forwarded, unopened, to the Whistleblower Unit. Other letters, if opened by the public inquiry staff of the Attorney General's office and determined by staff to be a whistleblower complaint, are forwarded to the Whistleblower Unit but are not added to the Office of Public Inquiry database, which is accessible to many AG staff.

The unit's administrative assistant will document receipt of the correspondence, assign a case file number, and forward the information to the unit director. If the whistleblower contacts the office by telephone, the call is transferred directly to the unit's director or whistleblower investigator. Similar to the State Auditors' process, the unit staff will determine whether the complaint is within the scope of the state's Whistleblower Act. If the complaint does not fall within the statutory jurisdiction of C.G.S. §4-61dd, the unit staff will refer the complainant or the complaint to the appropriate or relevant oversight entity. If the complaint is within the scope of the statute, the unit director or the investigator will prepare a file memo or other writing with a description of the complaint based on the communication from the whistleblower.

The information is then re-directed to the Auditors of Public Accounts as required by law. According to the Attorney General's staff, the office policy is to err on the side of caution and refer all whistleblower complaints to the Auditors. After the Auditors have completed their review, a summary report containing the Auditors' findings is submitted to the Attorney General. As described earlier, all whistleblower complaints reviewed by the Auditors are referred to the Attorney General.

All of the Auditors' summary reports are forwarded to the Whistleblower Unit within the Office of the Attorney General. The unit's administrative assistant documents receipt of the summary report, assigns a case file number if not already done, and gives the report to the unit director. The unit director reviews and shares the summary report with the unit's whistleblower lead attorney. Based on workload availability, either the unit director or other unit staff may prepare some preliminary background information on the request to determine the necessary investigative approach. The unit director, in consultation with the whistleblower lead attorney, decide whether the Auditor's summary report has sufficiently examined the allegations and requires no further action by the Office of the Attorney General. If the summary report indicates that the situation might merit further review, the unit director in consultation with the lead attorney and the Associate Attorney General determine whether the subsequent follow-up can be done by the Auditors or the findings call for additional investigation. According to the unit director, the summary reports with potential serious implications involving issues such as danger to the public, significant financial impact, or of substantial public importance are brought to the attention of the Attorney General.

Figure II-3. Whistleblower Process Within Office of the Attorney General



Source: LPRI&C

Investigations. Cases requiring additional investigation are handled by the whistleblower lead attorney or possibly another attorney from the unit assigned on an as-needed basis. The complexity of the whistleblower allegations may also necessitate a joint investigation with the State Auditors or, in special circumstances, outside assistance.[9] The Chief State's Attorney is made aware of any allegations that may involve criminal activity and agreements are worked out among the offices as to which parts of the case each office will continue to work. If the allegations involve health care issues, the whistleblower unit may also use resources from other Attorney General staff within the Health Care Fraud unit. Due to the confidentiality requirements of the state's whistleblower statutes and the possibility that the office may have to provide legal representation for state entities accused of misconduct, staff from other departments within the Office of the Attorney General are not involved in these investigations. "Firewalls"[10] have been constructed to avoid conflict of interest problems and any perception of impropriety. The firewalls include dedicated and secured computer terminals for the exclusive use of the Whistleblower Unit staff. In addition, all whistleblower information is maintained in a separate database and is not part of the agency's overall inventory of public information. Finally, the Whistleblower Unit is kept physically separate from the other Attorney General departments and restricted card key use is required to limit access to authorized personnel.

The whistleblower lead attorney uses the Auditors' summary report as a starting reference point. The supporting documentation for a report is maintained with the case file at the Auditors but is available to the Attorney General's whistleblower staff as needed. The unit's approach to whistleblower investigations is to prepare questions and request information and documents in a subpoena draft format without actually serving a subpoena, particularly from state agencies.[11] Although the unit attempts to obtain voluntary compliance, subpoenas are served when necessary.

Interviews conducted by the whistleblower staff may be formal or informal. Formal interviews require sworn statements and are recorded. The Whistleblower Unit has computer software equipment that records interview sessions. The equipment is a permanent fixture stationed in the Whistleblower Unit's conference room and there is also a portable version available that allows for off-site interview sessions.

Complaint disposition. There are three general case dispositions for whistleblower matters within the Attorney General's office. These include closing a case with no further follow-up, keeping the case open on a monitoring status, or conducting an investigation which may or may not result in a published report.

According to the unit director, a whistleblower case is rarely closed and most cases are placed on a monitoring status, which means they remain active with the possibility that additional information may materialize or further complaints may come forth. Cases placed on a

[9] In late 2005, the Attorney General's office worked together with the New York State Police in an evaluation of Connecticut's Department of Public Safety Internal Affairs Program stemming from whistleblower information.
[10] Firewalls are information barriers implemented within an organization to separate and isolate persons who make decisions from persons who are privy to undisclosed material information which may influence these decisions.
[11] A subpoena is a formal legal document that orders a named individual to appear before a duly authorized body at a fixed time to give testimony and/or produce documents in control of the individual.

monitoring status may have issues that have been pursued as far as possible by the investigative staff but can not proceed forward without more available evidence or witnesses.

Although significantly fewer in number, the majority of the work conducted by the whistleblower staff is on case investigations that have been identified as having potentially serious implications. As noted earlier, these cases involve matters such as danger to public safety, significant financial impact, or substantial public importance. These investigations typically result in a formal written report. These reports are prepared by the attorney(s) working on the investigation and reviewed by the unit director before they are submitted to the Associate Attorney General and, ultimately, the Attorney General for final approval. The report is then sent to the Governor and referred to the Chief State's Attorney if there is criminal involvement. Once the report is published, it is available to the public. Between January 1, 2006 and June 6, 2009, ten formal reports have been issued on various whistleblower complaints. A listing of the ten reports is provided in Appendix D.

Similar to the Auditors' policy, the Attorney General's office does not provide formal updates to whistleblower complainants unless requested. The office policy for whistleblower complaints is to theoretically approach them in the same manner as an active potential criminal case where information is not disclosed until the investigation is complete or the case is closed.

As mentioned previously, the Attorney General can only investigate and report findings and recommendations. Enforcement of any corrective action is done by the executive branch. Unlike other states, Connecticut does not have a False Claims Act to allow the state to recover penalties for corrupt practices by large state contractors. The Attorney General may follow up on particular issues if questions or concerns re-emerge. Although the Attorney General is authorized to investigation whistleblower retaliation claims, any individual relief sought by whistleblowers is provided by other entities. (Section III discusses retaliation complaints in further detail.)

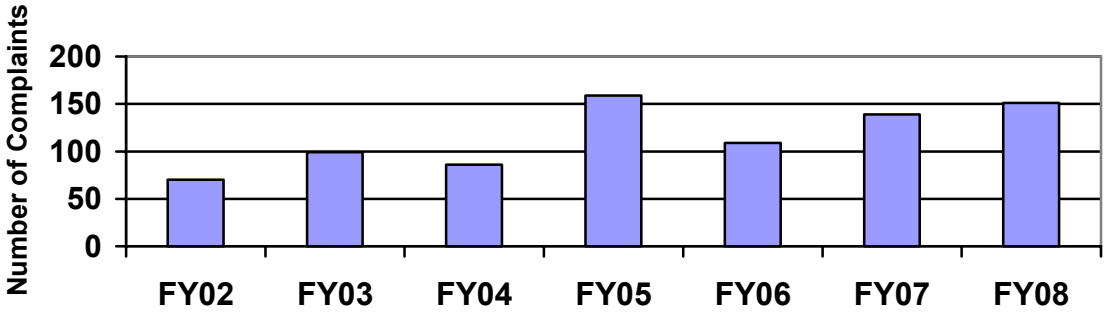
General Whistleblower Trends & Statistics

The following provides general trends and statistics on whistleblower matters in Connecticut. All of the information presented here focuses on the first part of the whistleblower process, during which the Auditors of Public Accounts receive and review complaints and are required to submit findings and any recommendations to the Attorney General. This information was primarily developed from data contained in the Auditors' annual reports and their internal database used primarily for complaint tracking purposes. As such, some of the analysis is limited in scope. While the Attorney General also maintains an internal tracking database, similar information (e.g., final disposition timeframes) was not readily available in their computer system. Further analysis on whistleblower information gathered from both the Auditors and Attorney General's case files will be provided in the findings and recommendations report.

Number of whistleblower complaints over time. Figure II-4 shows the annual number of whistleblower complaints filed with the Auditors of Public Accounts has increased substantially over the last six fiscal years. From FY 02 to FY 08, the Auditors of Public Accounts experienced a 116 percent growth in the number of whistleblower complaints submitted. In FY 02, the State Auditors received 70 whistleblowers complaints. The number of

whistleblower matters peaked in FY 05 when the office received 159 complaints. The following year the number of complaints decreased somewhat but has since continued to steadily grow. By FY 08, the number of complaints submitted rose to 151, close to the high seen in FY 05 and more than double the number received in FY 02.

Figure II-4. Whistleblower Complaints (FYs 2002-2008)



Source: Auditors of Public Accounts Annual Reports

In their 2007 annual report, the State Auditors commented on an "increased sensitivity by state officials towards detecting irregularities within state government".[12] They attributed the growing number of whistleblower complaints to a similar sensitivity within the public at large. The number of whistleblower complaints seems to reflect public awareness and concern with state government issues resulting after publicized proceedings and government scandals. For example, the FY 05 peak in whistleblower complaints coincides with the events involving former Governor John G. Rowland.

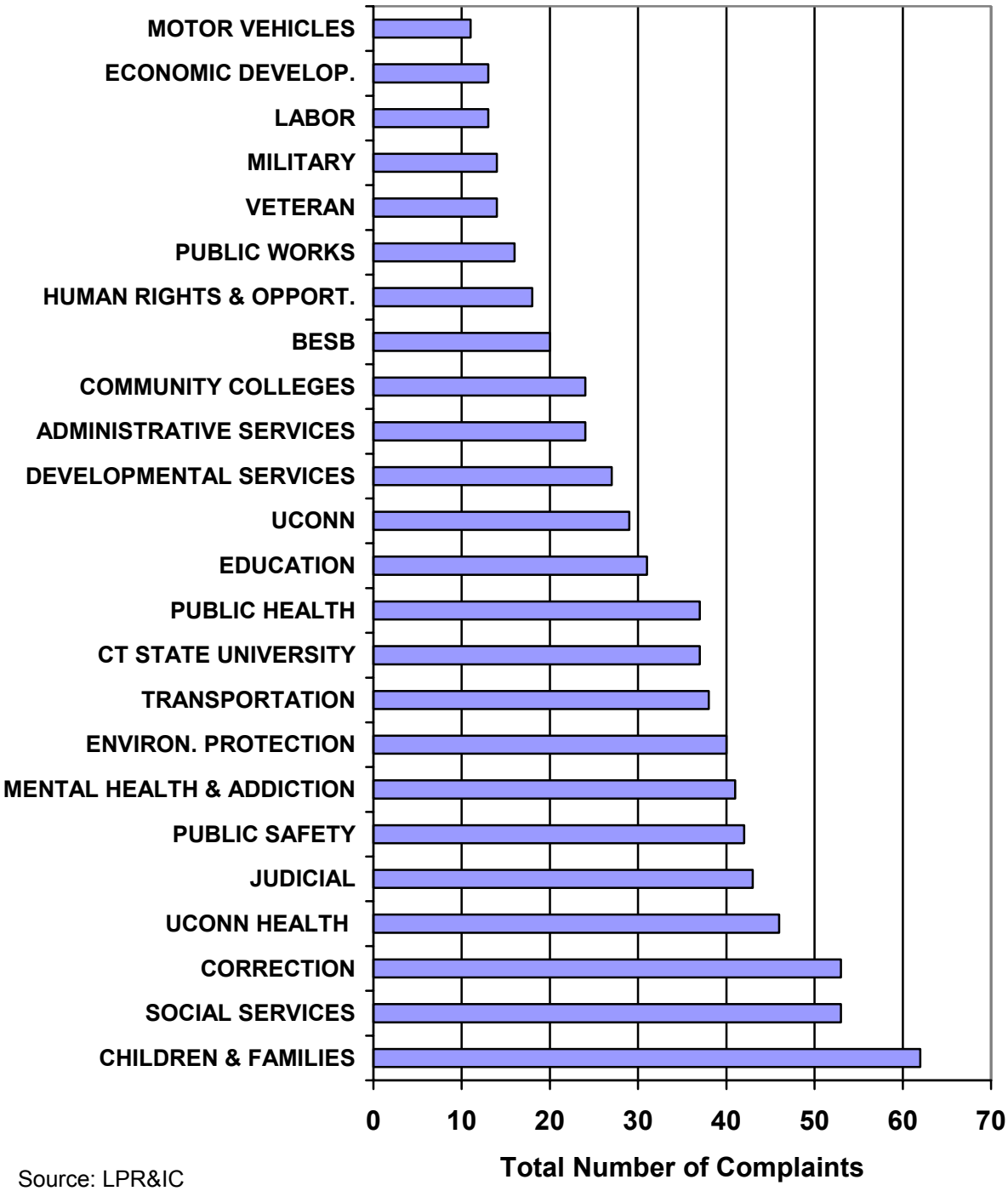
Number of whistleblower complaints against state agencies. The program review committee staff examined the number of whistleblower complaints filed against state agencies since FY 02. Figure II-5 lists the state agencies having a total of ten or more whistleblower complaints filed against them between July 1, 2001 and June 2, 2009. These 24 agencies received a range of 11 to 62 whistleblower complaints during this eight year time period. Of these:

- Eight of the 24 state agencies received between 11 and 20 complaints.
- Eight more organizations had between 21 and 40 complaints filed.
- Another eight agencies had more than 40 whistleblower complaints submitted against them.

(Appendix E provides the annual number of complaints for each of the 24 agencies.)

[12] 2007 Annual Report to the General Assembly, Auditors of Public Accounts, p.17

Figure II-5. State Agencies with 10 or More Whistleblower Complaints (FY 02-June 2009)



Source: LPR&IC

Number of whistleblower complaints by agency size. Table II-1 lists the three state agencies with the most number of whistleblower complaints during July 1, 2001 and June 2, 2009 ranked by the size of the agency as measured by the number of full-time employees. The three largest state agencies (over 2,000 full-time employees) with the most whistleblower complaints overall during this eight year time period are: the Departments of Children and Families (62), Social Services (53), and Correction (53).

The mid-sized agencies (500 to 2,000 employees) with the most whistleblower complaints include: the Departments of Public Safety, Environmental Protection, and Public Health. The agencies with the most whistleblower complaints with less than 500 employees are: the Department of Administrative Services, the Board of Education and Services for the Blind (BESB), and the Commission on Human Rights and Opportunities (CHRO).

The table also presents the complaint rate per 100 employees for each agency. As the table shows, the small and mid-sized agencies generally have a larger complaint rate per 100 employees than the large state agencies, which have more total number of complaints. It should be noted that different factors may impact the complaint rate including the time period examined. A longer or shorter examined time period would change the total number of complaints as well as the number of full-time employees resulting in possibly different complaint rate per agency.

Table II-1. Most Whistleblower Complaints (July 1, 2001- June 2, 2009) by Size of Agency

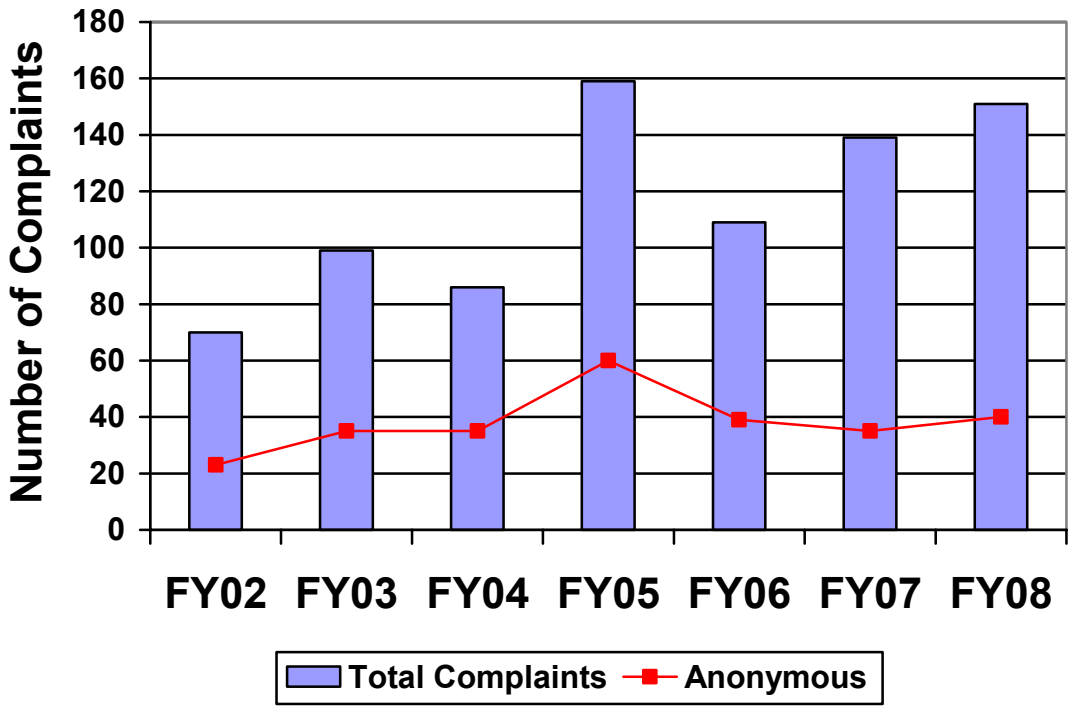
Agency	Permanent Full-Time Employees*	Total Complaints	Rate per 100 Employees**
Less than 500 Employees			
Administrative Services	348	24	6.8
BESB	120	20	16.6
Human Rights & Opport.	92	18	***
500 to 2,000 Employees			
Public Safety	1,790	42	2.3
Environ. Protection	1,008	41	4.0
Public Health	806	37	4.5
More than 2,000 Employees			
Children & Families	3,436	62	1.8
Social Services	2,042	53	2.5
Correction	6,581	53	0.8

*As reported in State Personnel Status Report (May 30, 2009)
** For the eight year period
*** Less than 100 employees
Source: LPR&IC Analysis of Auditors' database

Anonymous whistleblower complaints. As mentioned earlier, current state law allows anyone to file a whistleblower complaint. The whistleblower may possess the information as an internal source (e.g., agency employee) or as an external source (e.g., agency client), or the whistleblower may prefer to remain anonymous and not disclose how they came into possession of the information. Neither the State Auditors' or Attorney General's database distinguishes whether the source of the complaint is internal or external; however, each does indicate if a complaint was submitted by an anonymous source. Figure II-6 shows the anonymous complaint trends over time compared to the total number of complaints.

The number of anonymous complaints has been somewhat consistent during FYs 02-08. The number of anonymous complaints was slighter higher in FY 05, which again coincides with the overall increase in whistleblower complaints. However, the percentage of anonymous complaints in general has decreased from FY 02 when approximately one-third (33%) of all whistleblower complaints were anonymous to FY 08 when about a quarter of all complaints are anonymous (26%). Committee staff may be able to provide further analysis on the ratios of internal and external sources of whistleblower complaints in a review of case files.

Figure II-6. Anonymous Whistleblower Complaints (FYs 2002-2008)



Source: Auditors of Public Accounts

Table II-2 shows the agencies with more than 50 percent of anonymous whistleblower complaints between July 1, 2001 and June 2, 2009. During this time period, there were four agencies with over 50 percent of anonymous complaints. Three of the four agencies had fewer than 500 employees. Two agencies (Military and Public Works) had close to 70 percent of their whistleblower complaints submitted anonymously. Given the size of these agencies, it is possible that these individuals may have filed anonymously to avoid revealing their identity in a small environment.

Table II-2. Agencies with More than 50 Percent of Anonymous Whistleblower Complaints (July 1, 2001-June 2, 2009)

AGENCY	Permanent Full-Time Employees*	Total Complaints	Anonymous Complaints	Percent
Military	105	13	9	69%
Public Works	184	15	10	67%
Veteran Affairs	288	14	8	57%
Labor	834	13	7	54%

* As reported in the State Personnel Status Report (May 30, 2009)
Source: LPR&IC Analysis of Auditors' database

Number of complaints against large state contractors. As discussed in Section I, the whistleblower statutes were amended in 1998 to allow whistleblower complaints in situations occurring in a large state contract. The statutory provisions define a large state contract as valued at $5 million or more. Table II-3 provides the annual number of complaints against large state contractors. Between 2002 and June 2009, there were a total of 81 complaints filed with the State Auditors against large state contractors. As the table shows, there were 16 whistleblower complaints made against large state contractors during a three year period (2002 through 2004). However, the annual number of complaints has significantly increased over time.

Table II-3. Number of Complaints Filed Against Large State Contractors (2002- June 2009)

Year	Number of Complaints
2002	3
2003	8
2004	5
2005	13
2006	12
2007	10
2008	18
2009	12
TOTAL	81

Source: Auditors of Public Accounts

Number of complaints against quasi-public agencies. State law defines the quasi-public entities subject to the state's whistleblower provisions as: Connecticut Development Authority (CDA); Connecticut Innovations, Incorporated ; Connecticut Health and Educational Facilities Authority (CHEFA); Connecticut Higher Education Supplemental Loan Authority (CHESLA); Connecticut Housing Finance Authority (CHFA); Connecticut Housing Authority; Connecticut Resources Recovery Authority (CRRA); Capital City Economic Development Authority (CCEDA), and Connecticut Lottery Corporation. Table II-4 lists the total number of whistleblower complaints received by the State Auditors for these entities between 2002 and June 2009. As the table shows, there have been a total of 11 complaints filed against this group over the eight year period with four quasi-public agencies receiving no whistleblowers complaints.

Table II-4. Number of Complaints Filed Against Quasi-publics (2002- June 2009)

Name	Complaints
CT Development Authority	-
CT Innovations	3
CHEFA	-
CHESLA	1
CHFA	2
CT Housing Authority	-
CRRA	3
CCEDA	-
CT Lottery Corp.	2
TOTAL	11

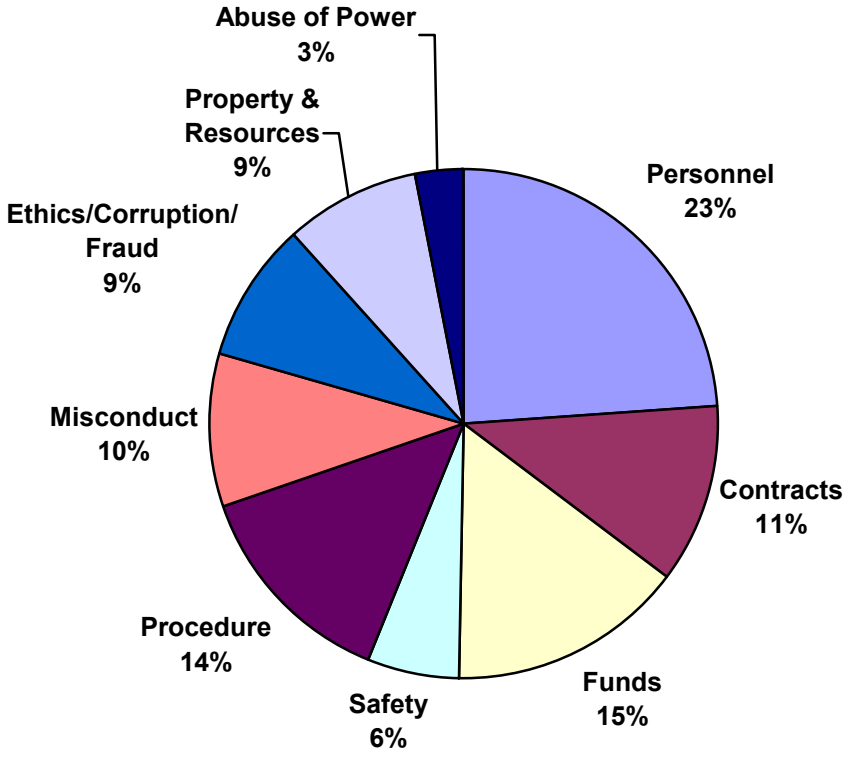
Source: Auditors of Public Accounts

Type of whistleblower allegation. Committee staff also examined the State Auditors' whistleblower database to gauge the type of allegations submitted. As mentioned earlier, the database is primarily used for internal office tracking. However, the database does have a general description of the type of allegation made. The program review staff used this description as a broad measure of the subject areas involved in whistleblower claims. Because a generic description was used in many cases, the committee staff was not able to categorize 33 percent (306) of the 928 whistleblower complaints made between 2002 and June 2009. The results for the remaining 622 complaints are depicted in Figure II-7.

A few caveats should be noted in this analysis. Complaints may involve more than one allegation. The analysis provided below is based upon the description given by the administrative auditor at complaint intake. Further complaint details are contained in the individual case file. In order to categorize the database allegations, the committee staff grouped certain topics into broader subject areas.

As the figure shows, personnel issues make up 23 percent of the whistleblower allegations. This includes the most common type of allegation which is use of time such as employee attendance, work hours, use of comp time, or sick leave. Employees conducting personal business on state time are also a common personnel issue. Other personnel issues include complaints about hiring/promotion practices, health insurance or retirement benefits, worker's compensation, and payroll.

Figure II-7. Whistleblower Complaints Allegations (2002 - June 2009) N=622



Source: LPR&IC

Allegations regarding the use of funds or grants are the second largest category (15%) followed by failure to adhere to agency policy or procedures (14%) including the breach of confidential information or an inadequate agency response to a complaint or to conduct an investigation. Eleven percent of the allegations involve state contracts in particular the bidding process, contract awards/terms/amendments, and leases. Misconduct (10%) covers a variety of allegations from specific incidents (e.g., employees sleeping at their desks), political activity, harassment, favoritism, and other general mismanagement.

Nine percent of the complaints allege misuse of state property and resources such as computers, telephones, or state vehicles. Another nine percent of allegations claim unethical practices, conflict of interest, fraud, or corruption. Issues surrounding general public safety, client care, and unsafe work conditions are mentioned in six percent of the claims while abuse of power, authority, or position is represented in three percent.

Process times for complaints filed with the State Auditors. The State Auditors' provide the first mandated review of whistleblower complaints before referring the matter to the Office of the Attorney General. There are no statutory timeframes or deadlines associated with this process. Table II-5 gives an overview of the Auditors' processing time from complaint intake to completion. As noted earlier, there are limitations with the database information used for this analysis. Due to inputting inconsistencies, data was not available for all cases. The program review staff was able to identify 469 cases with complete information meaning they had identifiable intake and completion dates.

Based on the information of the 469 cases, the Auditors' median processing time from complaint intake to completion is approximately nine and a half months. Over 60 percent of the complaints are handled in less than a year with a median of 5.5 months while close to 40 percent of the cases have a median processing time of almost a year and half. It is important to remember that these processing times are also impacted by staff availability. As noted earlier, whistleblower assignments may be delayed if the staff is also conducting audits.

Table II-5. State Auditors' Whistleblower Process Time from Intake to Complete.

Process Time	Number of Cases with Completion Dates	Average Time	Median Time
One Year or less	293	5.7 months	5.5 months
More than One Year	176	1.7 years	1.5 years
Total	**469**	**11.3 months**	**9.5 months**

Source: LPR&IC Analysis of Auditors' database

Table II-6 provides a closer examination of the Auditors' processing time in recent years. Overall, the process times range from one day to four years. In 2005, the median time to process a whistleblower complaint was 11.6 months. Since then, the median time to process a complaint has decreased to approximately ten months. On average, it appears the Auditors are completing about 80 to 90 whistleblower cases a year since 2006. Currently, there are 197 cases still pending with at least 29 cases opened more than two years ago.

Table II-6. State Auditors' Whistleblower Process Time from Intake to Complete.

Year	Number of Cases w/ Completion Date	Time Range	Average Time	Median Time	Number of Open Cases*
2005	147	1 day to 4 years	1.1 years	11.6 months	12
2006	91	18 days to 3.7 years	11.4 months	10 months	17
2007	107	12 days to 3 years	11.7 months	9.2 months	32
2008	83	21 days to 2 years	10 months	9.8 months	68
2009	41	2 days to 11 months	3.5 months	2.8 months	68
Total	**469**	**1 day to 4 years**	**11.3 months**	**9.5 months**	**197**

* As of September 21, 2009
Source: LPR&IC Analysis of Auditors' database

Section III

Whistleblower Retaliation Protections

A significant aspect of Connecticut's whistleblower policy is to provide statutory protections against retaliation to individuals coming forth with whistleblower information. A description of these protections as mandated by state law is given below.

Statutory Protections (C.G.S.§ 4-61dd (b))

Since its 1979 enactment, Connecticut's whistleblower law has prohibited retaliation against employees who disclose whistleblower information. Over the years, the retaliation prohibition was applied to an expanding list of people. Originally, the retaliation prohibition only applied to the employee's appointing authority. This was subsequently expanded to prohibit retaliation by any agency officer or employee. As the groups protected by the whistleblower law increased (i.e., employees of quasi-public agencies and of large state contractors) so did the retaliation prohibition.

Before 2002, employees who alleged that a retaliatory personnel action had been threatened or taken because of the employee's whistleblower disclosure to the Auditors or the Attorney General had the following options:

- If the employee was covered by a collective bargaining agreement, the procedures set out in that contract could be used.
- If the employee was not covered by such an agreement, the employee could file an appeal with the Employees' Review Board.[13]
- Employees of a large state contractor could pursue any administrative remedies available to them within their organization.

In 2002, two significant changes to the whistleblower statute were made related to employee retaliation protection and relief. First, the employee could now notify the Attorney General about the retaliation charge, who was to "investigate pursuant to subsection (a)" of C.G.S.§4-61dd, which refers to the Auditors' and the Attorney General's responsibilities about handling whistleblower complaints. Further, "after the conclusion of the [Attorney General] investigation", the Attorney General or the employee could file a complaint about the personnel action with the Chief Human Rights Referee for a hearing on the matter. If retaliation was found, the employee could be awarded job reinstatement, back pay, reestablishment of any benefits, reasonable attorneys' fees and any other damages. Going to the Employees' Review

[13] Employees Review Board is a seven-member board appointed by the Governor to hear appeals by state employees not included in collective bargaining units. Such employees may appeal demotions, suspensions, dismissals, or violations of personnel statutes or regulations.

Board or utilizing labor contract procedures were now termed as alternatives to these new provisions.

The second change was the establishment of a rebuttable presumption[14] that any personnel action taken or threatened against an employee who makes a whistleblower complaint is deemed retaliatory if it occurs within one year of the complaint.

In 2005, more significant changes were made to the retaliation provisions. Per the 2005 legislation, in addition to the whistleblower reports made to the Auditors or the Attorney General, whistleblower retaliation protection now covered an employee disclosing whistleblower information to:

- an employee of the state or quasi-public agency where such individual is employed;
- an employee of a state agency pursuant to a mandated reporter statute; or
- an employee of the contracting state agency if the information is related to a large state contract.

A change was also made to the whistleblower retaliation process. The requirement that an Attorney General retaliation investigation occur and be concluded before a hearing could be used was eliminated. Currently, the Attorney General reporting option and the hearing option both still remain, but are no longer connected.

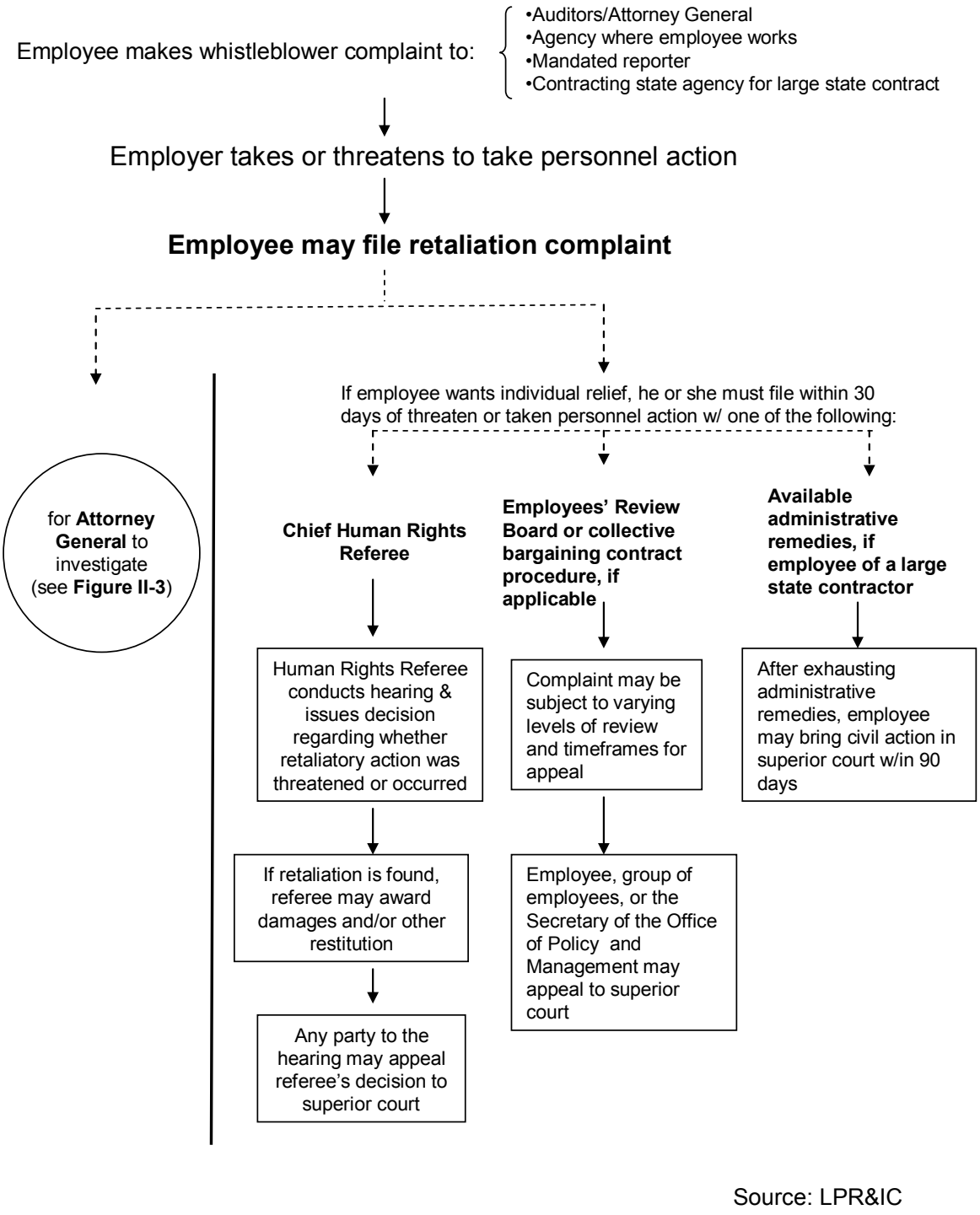
Current Processes for Retaliation Complaints

Figure III-1 depicts the current venues available to individuals who allege they have been subjected to or threatened with whistleblower retaliation. As noted above, employees may go to the Attorney General for an investigation, but as shown, that option, unlike the others, does not provide for individual relief (e.g., job reinstatement or restoration of benefits). State and quasi-public agency employees may still file retaliation claims with either the Employees' Review Board or in accordance with their collective bargaining agreement, depending on their employee status. Also, employees of large state contractors may pursue administrative remedies available to them within their organization and, if still aggrieved, bring a civil cause of action.

In all cases seeking individual relief, the complaints must be filed no later than 30 days of the employee becoming aware of the incident giving rise to the retaliation claim. In all venues for individual relief, an aggrieved party to the proceedings may appeal decisions to superior court. As noted earlier, state law creates a rebuttable presumption that any personnel action taken or threatened against an employee who makes a whistleblower complaint is retaliatory if it occurs within one year of the complaint. State law dictates that complainants seeking individual relief may only pursue action in one forum.

[14] A rebuttable presumption is an assumption that will stand as legal fact unless someone comes forward to contest it and prove otherwise.

Figure III-1. Proceedings Regarding Retaliatory Personnel Actions



Source: LPR&IC

Chief Human Rights Referee Complaint Process

As Figure III-1 illustrates, a complaint to the Chief Human Rights Referee must be filed no later than 30 days after the employee learns of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of the whistleblower statute. Whistleblower retaliation complaints filed with the Chief Human Rights must be submitted on a complaint form and sent to Office of Public Hearings within the state Commission on Human Rights and Opportunities' (CHRO) in Hartford. The Chief Human Rights Referee assigns the complaint to one of the five human rights referees who also preside over CHRO discrimination cases. However, whistleblower retaliation cases are independent of CHRO jurisdiction and are not investigated by CHRO.

After the Chief Human Rights Referee assigns the complaint, the assigned referee will meet with all of the parties at an initial conference within 30 days after the complaint was filed. Attendance at the initial conference is mandatory for all parties and/or their legal representatives. Parties are not required to have legal representation, but are responsible for retaining it themselves if they wish to do so. At the meeting, the referee explains the overall process and sets deadlines for the parties' responsibilities. These include deadlines for the production of documents, the filing of witness and exhibit lists, and any objections. Any complainant failing to attend the conference may face dismissal of the complaint. Respondents who fail to appear, including those who believe they are not subject to the statutory provision of C.G.S. §4-61dd, face possible default.

A hearing to determine whether the respondent violated the anti-retaliation provisions of the whistleblower statute is scheduled approximately seven to nine months after the complaint is filed to allow time for preparation and other pre-hearing activities. At the hearing, all parties are given the opportunity to present their legal argument by offering evidence and testimony and the ability to examine witnesses under oath. After the hearing, the parties may file post-hearing briefs that are written arguments based on the evidence and the applicable law.

Within 90 days after the hearing ends or the due date for the filing of briefs (whichever is later), the referee must issue a decision whether a violation of the statute occurred and, if so, what relief will be provided to the complainant. If there is a finding that the action or threatened action was retaliatory, the referee may order the aggrieved employee to:

- be reinstated to his or her former position;
- receive back pay; or
- have employee benefits reestablished to the level for which the employee would have been eligible but for the violation, and receive reasonable attorney fees and any other damages.[15]

Any party may appeal the referee's decision to superior court. Prior to filing an appeal, the aggrieved party may ask the presiding referee to reconsider the decision under certain situations.[16]

[15] According to OPH, the phrase "any other damages" may be construed to include damages for emotional distress.

According to OPH, settlements are encouraged. Parties may request a meeting with another human rights referee in an attempt to facilitate a settlement. The settlement referee does not convey any of the parties' discussion to the presiding referee. Unlike the confidentiality provisions governing the State Auditors and the Attorney General, any papers filed with OPH are subject to the Freedom of Information Act.

Analytical basis for retaliation complaints. Whistleblower retaliation cases filed pursuant to C.G.S. § 4-61dd are analyzed under a three-step burden-shifting analytical framework.[17] First, the complainant/employee has the burden of presenting a prima facie case of whistleblower retaliation, meaning the complaint satisfies all of the legal elements of the statutory provision.[18] Next, the respondent/employer's burden is to show its non-retaliatory explanation for the adverse personnel action followed by the complainant/employee's final burden of proving that the respondent/employer retaliated because of the disclosure of the whistleblower protected information. This analytical framework is outlined in Figure III-3.

The first step, the prima facie case analysis, has three prongs. The first prong is for the complainant to demonstrate that he or she engaged in a statutorily protected activity. As noted earlier, the statutory elements for whistleblower retaliation complaints are:

- The respondent must be:
  - a state department or agency,
  - a quasi-public agency, or
  - a large state contractor.

- The complainant must be an employee of the respondent.

- The complainant must have knowledge of either:

  1. corruption, unethical practices, violations of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in a state department or agency or quasi-public agency, or

  2. corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to public safety occurring in a large state contract.

[16] Pursuant to whistler blower regulations and C.G.S. §4-181a, there may be reconsideration of a final decision on the grounds that: a) an error of fact or law should be corrected; b) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the proceedings; or c) other good cause has been shown.

[17] Michael Asante v. University of Connecticut, OPH/WBR No. 2006-031(June 4, 2007) p. 4

[18] Prima facie means "on its face" the complaint contains all the necessary legal elements of a recognized cause of action and will suffice until rebutted.

Figure III-2. Analytical Framework for Whistleblower Retaliation Cases

STEP 1 Complainant/Employee presents prima facie case that:

Prong 1

Complainant/Employee satisfies the statutory elements because:

a) Respondent is a state department or agency, a quasi-public agency, or large state contractor

b) Complainant is employee of Respondent

c) Complainant has knowledge of misconduct by Respondent

d) Complainant disclosed information to an employee of:

- Auditors of Public Accounts
- Attorney General
- State agency/quasi-public where employed
- State agency pursuant to mandatory reporter law
- Contracting state agency of large state contractor

Prong 2

Complainant/Employee was threatened with or subjected to an adverse personnel action by Respondent/Employer after whistleblower disclosure

Prong 3

Complainant/Employee establishes an inference of a causal connection between threatened or taken personnel action and the protected disclosure either:

- *Directly* (e.g. Clear evidence of Respondent/Employer retaliation against Complainant/Employee)
- *Indirectly* (e.g. Circumstantial evidence of disparate treatment of Complainant/Employee shortly after whistleblower disclosure)
- *Statutory rebuttable presumption*

STEP 2

Respondent/Employer provides its non-retaliatory explanation for the adverse personnel action

STEP 3

Complainant/Employee proves that Respondent/Employer retaliated because of the disclosure of whistleblower protected information.

Source: LPR&IC

- The complainant must have disclosed the protected information to an employee of:

    1. Auditors of Public Accounts;
    2. Attorney General;
    3. the state agency or quasi-public agency where he or she is employed;
    4. a state agency pursuant to a mandatory reporter statute, or
    5. a contracting state agency concerning a large state contractor.

The second prong of the prima facie case is that the complainant must show that he or she was threatened with or subjected to an adverse personnel action by the respondent after the whistleblower disclosure. Under the third prong, the complainant must present sufficient evidence to establish an inference of a causal connection between the threatened or taken personnel action and the protected disclosure. The inference of causation can be established:

- directly (e.g. evidence of the respondent's intentional retaliation against the complainant),
- indirectly (e.g. circumstantial evidence of disparate treatment of similarly situated co-workers shortly after the whistleblower disclosure), or
- by the statutory rebuttable presumption.

General Trends and Statistics for Whistleblower Retaliation Claims

As noted in Section II, state law requires the Auditors of Public Accounts to conduct the first review of whistleblower complaints before referring the matter to the Attorney General. Interviews with the State Auditors' and Attorney General's staff indicate a difference of opinion regarding the statutory interpretation of the Auditors' involvement in retaliation complaints. The Auditors view the Attorney General as having primary investigation responsibility for retaliation complaints while the Attorney General's staff maintains that the Auditors must provide the first review for all whistleblower complaints including retaliation claims. The impact of this difference of opinion on the process is unclear and will be further explored during the case file review.

The committee staff examined the State Auditors' whistleblower database to determine the number of whistleblower retaliation complaints reported to the Attorney General. It should be noted that the database's description of the whistleblower matter has not been inputted in a uniform format over the years. Therefore, the committee staff analysis only included the whistleblower cases clearly identified by the Auditors' electronic database as a retaliation claim. The results are presented in Table III-1.

Annual number of retaliation complaints reported to Auditors. As the Table III-1 shows, the number of retaliation claims filed with the State Auditors has increased over time. In 2002, the database indicates that no retaliation claims were filed but in 2003 five retaliation complaints were submitted. This was followed by another year of no whistleblower retaliation complaints. The number of retaliation complaints grew significantly in 2005 when the total number of complaints (13) more than doubled from the previous two years. Between 2006 and 2008, there were 19 more retaliation claims reported to the State Auditors and referred to the Attorney General. By June 2009, 16 additional retaliation complaints were filed in less than a full year. It should be noted that at times if more than one similar retaliation claim is submitted, the Auditors will incorporate any new complaints into an already existing case. Therefore, the total number of retaliation complaints may be higher than the database indicates.

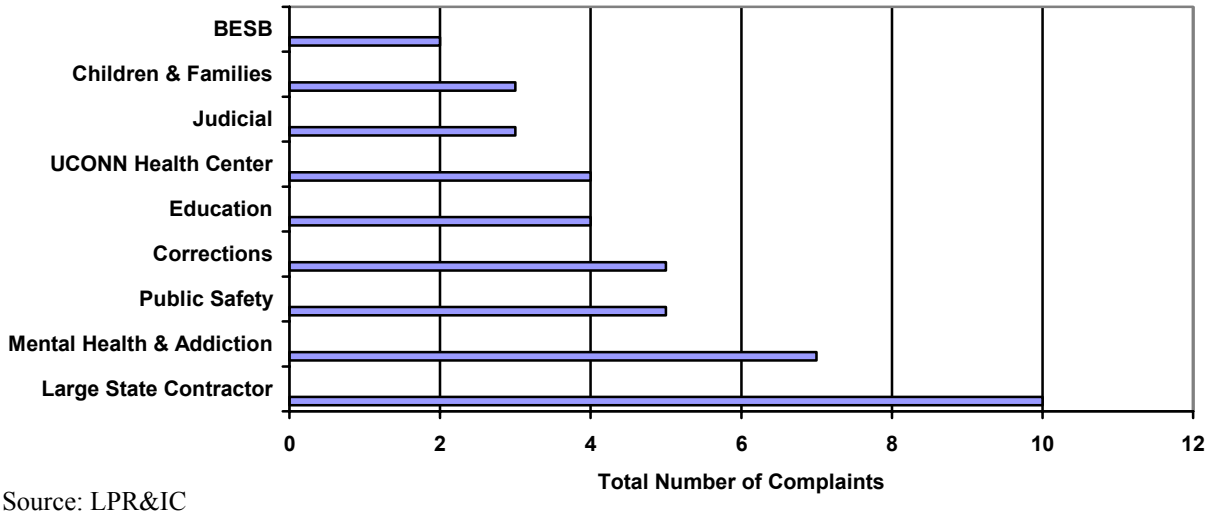
Table III-1. Annual Number of Retaliation Complaints Filed with State Auditors (2002- June 2009)

Year	Total Number Of Retaliation Complaints
2002	0
2003	5
2004	0
2005	13
2006	8
2007	3
2008	8
2009	16
TOTAL	53

Source: Auditors of Public Accounts

Figure III-3 lists the entities named in two or more retaliation complaints during the examined time period. As the chart illustrates, the largest number of whistleblower retaliation complaints have been reported against large state contractors. Large state contractors, as a group, account for 19 percent of all whistleblower retaliation complaints.

Figure III-3. Entities with Two or More Retaliation Complaints (2002-June 2009)



Source: LPR&IC

In addition, eight state agencies had two or more retaliation complaints filed with the State Auditors and referred to the Attorney General. (A listing of retaliation complaints reported to the State Auditors is provided in Appendix F.) Among the state agencies, the Department of Mental Health and Addiction Services had the most retaliation complaints (7) followed by the Departments of Public Safety and Correction with five complaints each. No retaliation complaints have been made to the State Auditors involving a quasi-public agency.

Annual number of retaliation complaints reported to the Chief Human Rights Referee. As noted earlier, the Chief Human Rights Referee complaint process is for employees seeking individual relief and is separate from the Attorney General's whistleblower process. The following provides some general trend and statistical information derived from a listing of the human rights referees' whistleblower retaliation decisions supplied by the Chief Human Rights Referee.

Table III-2. Annual Number of Retaliation Complaints & Complainants Filing with Chief Human Rights Referee (2003 - August 26, 2009*)

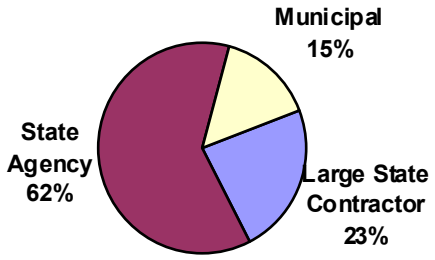
Year	Total Number	
	Complaints	Complainants
2003	5	5
2004	3	3
2005	6	6
2006	23	19
2007	16	14
2008	33	26
2009*	13	13
Total	99	86

Source: LPR&IC Analysis of Referees' Decisions

Table III-2 shows the annual number of complaints and complainants filing retaliation complaints with the Chief Human Rights Referee since 2003. Between 2003 and August 26, 2009, a total of 99 retaliation complaints were received from 86 complainants. Between 2006 and 2008, eight complainants filed more than one retaliation claim in the same year. Four complainants filed a retaliation claim in more than one year. One complainant submitted multiple complaints in different years. As the table shows, the number of complaints and complainants seems to have gradually increased over time.

Retaliation complaints by respondent type. Figure III-4 provides the respondent type breakdown for whistleblower retaliation complaints submitted to the Chief Human Rights Referee between 2003 and August 26, 2009. As the figure illustrates, most of the whistleblower retaliation claims (62%) were filed against state agencies while 23 percent were filed against organizations named as large state contractors. Fifteen percent were submitted against entities initially categorized as quasi-public agencies but subsequently determined to be municipal agencies.

Figure III-4. CHRR Retaliation Complaints by Type of Respondent (2003-August 26, 2009)



Source: LPR&IC

Retaliation complaints by agency. Table III-3 names the entities involved in these retaliation claims and the total number of complaints filed against them with the Chief Human Rights Referee between 2003 and August 26, 2009. During this time period, four state agencies had more than five complaints filed against them – the Department of Correction (9), Judicial (7); the Department of Public Safety (6), the Department of Mental Health and Addiction Services (6). These four agencies are involved in 45 percent (28 complaints) of the 62 complaints filed against state agencies. As discussed previously, there were numerous complaints filed against municipal entities that were mistaken for quasi-public agencies and employers who were not actually large state contractors. Appendix G provides the annual breakdown of complaints filed against each entity.

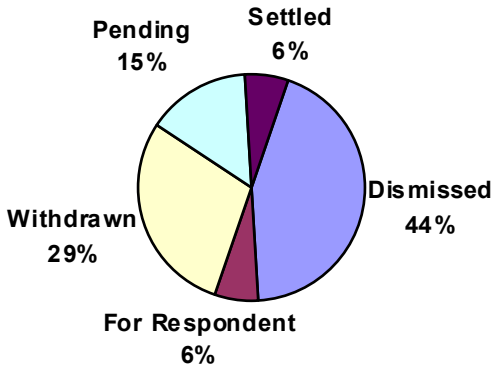
Table III-3. Number of Complaints and Entities Involved in Retaliation Cases Filed with Chief Human Rights Referee (2003 through August 26, 2009)

Total number of Complaints Filed	Name of Entity Involved (Number of Complaints Filed)
One Complaint	Comptroller; Developmental Services; Military; Administrative Services; Social Services; Transportation; Latino Commission
Two to Four Complaints	CHRO (2); Labor (2); Public Health (2); Environmental Protection (2); BESB (2); UCONN (3); UCONN Health Center (4); Motor Vehicles (4); CT State University System (4)
More than Four Complaints	Public Safety (6); Mental Health & Addiction Services (6); Judicial (7); Correction (9); Municipal Entity* (15); Large State Contractor* (23)

* Complaints filed are against separate entities
Source: LPR&IC Analysis of Human Rights Referees' Whistleblower Retaliation Decisions

Retaliation complaints by final disposition. Committee staff also reviewed the final status of the 99 complaints published in the human rights referees' summary index as of August 26, 2009. The results are presented in Figure III-5. As the chart shows, a majority of the complaints filed with the human rights referees are dismissed (43%) or withdrawn (29%). Six percent were ultimately decided in favor of the respondent. It is important to note that a decision in favor of the respondent is essentially a dismissal of the retaliation claim. To date, none of the complaints have been decided in favor of the complainants. However, six percent have been settled and fifteen complaints (15%) are pending.

Figure III-5. Final Disposition of CHRR Retaliation Complaints (2003 to Aug. 26, 2009)



Source: LPR&IC

Dismissals. The grounds for complaint dismissal can vary and may include procedural defects (e.g., complaints not filed in timely fashion, party's failure to appear) or lack of jurisdiction (i.e., complainant or respondent not covered by whistleblower statutory provision). An examination of the dismissed complaints (seen in Table III-4) indicates that frequently (47%) the basis for dismissal is that the respondent is not a state agency, quasi-public agency, or a large state contractor. The referee decisions reveal that complaints are often filed against respondents who are actually municipal entities that are misidentified by the complainant as quasi-public agencies. Similarly, complainants mistakenly list respondents who are not large state contractors.

Procedural defects are another common ground for dismissal. These defects include not filing within the statutory 30-day deadline, a party failing to appear at scheduled proceedings or not responding to motions, or simultaneously pursuing the whistleblower matter in other forums.

Table III-4. Number and Basis of Retaliation Complaint Dismissals (2003- August 26, 2009*)

	2003	2004	2005	2006	2007	2008	2009*	Total
Total Number of Complaints Filed	**5**	**3**	**6**	**23**	**16**	**33**	**13**	**99**
Number of Total Dismissed:	*1*	*2*	*3*	*11*	*7*	*16*	*3*	*43*
• Not a state or quasi-public agency or large state contractor	-	1	3	5	2	6	3	20
• Not an employee of state/quasi-public agency or large state contractor	-	-	-	-	1	2	-	3
• Untimely Filing	-	1	-	1	3	3	-	8
• Failure to Appear/Respond	1	-	-	4	1	5	-	11
• Sought Other Forum	-	-	-	1	-	-		1

Source: LPR&IC Analysis of Referees' decisions

Final complaint determinations over time. Table III-5 presents a breakdown of the final outcomes for the retaliation complaints filed each year. As the table shows, six complaints had a final determination in favor of the respondent. In two cases, a reconsideration of the decision was requested. One was denied reconsideration and another affirmed the final decision.

Table III-5. Final Status of Complaints Filed between 2003 and August 28, 2009.

	2003	2004	2005	2006	2007	2008	2009	Total
Total Filed	**5**	**3**	**6**	**23**	**16**	**33**	**13**	**99**
Dismissed	1	2	3	11	7	16	3	43
Withdrawn	-	1	2	11	6	8	1	29
In Favor of Respondent	1	-	1	1	3	-	-	6
Settled	3	-	-	-	-	3	-	6
Pending	-	-	-	-	-	6	9	15

Source: LPR&IC Analysis of Referees' decisions

Final decision status by state agency. Committee staff examined the final decision status of the 13 state agencies with two or more retaliation complaints filed against them. As seen in Table III-6, six of the 13 agencies had all retaliation claims filed against them dismissed or withdrawn. Three state departments have had five or more retaliation complaints – Correction (9), Judicial (7), and Mental Health and Addiction Services (6). At least half of the retaliation complaints filed against the Department of Correction and Judicial have been dismissed or withdrawn. The Department of Correction has also had three decisions in their favor which is in effect a dismissal of the complaints. Half of the six whistleblower retaliation complaints against the Department of Mental Health and Addiction Services have been settled and two were dismissed or withdrawn. Each of the three departments still has complaints pending.

Table III-6. Final Decision Status for State Agencies with Two or More Retaliation Complaints

Agency	Total Filed	Dismiss	Withdrawn	In Favor of Respondent	Settled	Pending
BESB	2	2	-	-	-	-
Public Health	2	-	2	-	-	-
Human Rights & Opportunity	2	-	2	-	-	-
Labor	2	1	1	-	-	-
Motor Vehicles	4	-	4	-	-	-
Public Safety	6	3	3	-	-	-
Environmental Protection	2	-	-	1	-	1
UCONN	3	-	1	1	-	1
UCONN Health Center	4	1	1	-	1	1
CT State University System	4	2	-	1	-	1
Mental Health & Addiction	6	1	1	-	3	1
Judicial	7	1	4	-	-	2
Correction	9	3	1	3	-	2

Source: LPR&IC Analysis of Referees' decisions

Process times for retaliation complaints filed with Chief Human Right Referee. Table III-7 provides the process times for the whistleblower retaliation complaints filed with the Chief Human Rights Referee. The process time for whistleblower retaliation complaints from intake to final disposition varies. The time ranges from cases being open and closed on the same day to 2.3 years. Overall, the median processing time for all retaliation complaints is 3.4 months. The vast majority (89%) of the 84 retaliation complaints with a final disposition are resolved within a year or less with a median process time of 2.7 months. Nine retaliation complaints have taken more than a year to complete. The median time for these cases is 1.1 year.

Table III-7. Human Rights Referees' Process Time for Retaliation Claims from Intake to Final Determination.

Year	Number of Cases	Time Range	Average Time	Median Time
One Year or less	75	Same day to 11.2 months	3.8 months	2.7 months
More than a year	9	1 year to 2.3 years	1.3 years	1.1 years
Total	84	Same day to 2.3 years	5.2 months	3.4 months

Source: LPR&IC Analysis of Referees' decisions

Section IV

Federal Whistleblower Law and Process

For comparative purposes, this section provides a description of how the federal government handles whistleblower matters. Some similarities exist among both the federal and Connecticut processes; however, certain distinct features and key differences are apparent. In particular, the federal government has one agency, the U.S. Office of Special Counsel, to administratively manage and oversee all whistleblower complaints, however, the investigation of such matters is typically conducted by the various Office of Inspectors General designated to the agencies in question. In addition, the federal government:

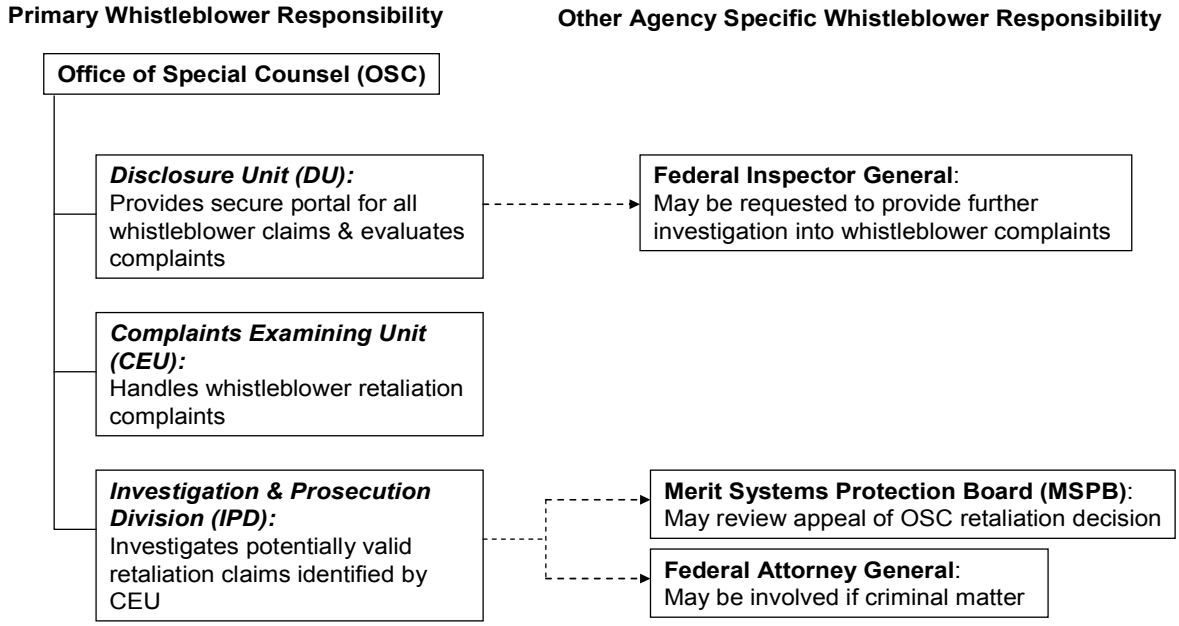
- has set timeframes for specific parts of its process,
- requires automatic notification to complainants,
- only accepts first-hand knowledge from complainants,
- treats anonymous complaints differently,
- uses a team approach (investigator and attorney) for retaliation cases, and
- may request a stay of personnel action until an investigation is complete.

Federal Entities Involved in Whistleblower Matters

On the federal level, the U.S. Office of Special Counsel (OSC) is responsible for handling disclosures of wrongdoing in the federal government. OSC receives and investigates allegations of prohibited personnel practices under federal law, which includes reprisals for whistleblowing. The basic OSC authority comes from three federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act, and the Hatch Act. The OSC is headed by Special Counsel, who is appointed by the President, and confirmed by the Senate. Headquartered in Washington, D.C., OSC serves as an independent federal investigative and prosecutorial agency. It employs primarily attorneys, investigators, and personnel management specialists.

Figure IV-1 shows the involvement of OSC and other federal agencies in handling whistleblower claims. As the figure illustrates, three units within OSC are involved with whistleblower matters. The Disclosure Unit (DU) provides a secure portal for whistleblower disclosures of alleged misconduct occurring within federal agencies. The Complaint Examining Unit (CEU) handles all whistleblower retaliation complaints referred by DU. Any retaliation complaint found to merit further investigation and legal review is referred to the Investigation and Prosecution Division (IPD). The OSC may also collaborate with other federal agencies in handling whistleblower matters. These may include the U.S. Attorney General for matters involving criminal activity or the Inspector General for anonymous complaints. In addition, appeals of OSC retaliation decisions may be reviewed by the Merit Systems Protection Board (MSPB). The following discusses the role and functions of the various OSC units involved in handling whistleblower complaints.

Figure IV-1. Federal Agencies Involved in Whistleblower Claims



Source: LPR&IC

Disclosure Unit (DU). The OSC's Disclosure Unit's (DU) statutory authority allows current and former federal workers and applicants for federal employment to disclose information about various improprieties at federal agencies, including:

- violation of federal law, rule, or regulation;
- gross mismanagement;
- gross waste of funds;
- abuse of authority; or
- substantial and specific danger to public health or safety.

The DU does not have jurisdiction over disclosures filed by:

- employees of the U.S. Postal Service and Postal Rate Commission;
- members of the armed forces of the United States;
- state employees operating under federal grants; or
- employees of federal contractors.

Figure IV-2 outlines the OSC process for whistleblower disclosures. Whistleblowers must make disclosures to OSC's Disclosure Unit in writing. Federal law prohibits the whistleblower's identity to be revealed without his or her consent. However, if the Special Counsel determines there is an imminent danger to public health or safety or imminent violation of any criminal law, he has discretionary authority to reveal the whistleblower's identity.

DU attorneys review disclosures in the order they are received with disclosures of dangers to public health and safety considered a high priority. The unit will generally not consider anonymous disclosures. If a disclosure is submitted anonymously, the matter will be referred to the Office of the Inspector General (OIG) in the appropriate agency with no further action by OSC. (The role of the federal Inspector General is discussed later in this section.)

DU attorneys evaluate each disclosure to determine if there is sufficient information to conclude that a substantial likelihood exists that one of the listed improprieties has occurred. The OSC does not have authority to directly investigate the disclosures it receives. In order to make a "substantial likelihood" finding, OSC considers various factors including whether the disclosure is based on reliable, first-hand information. The OSC generally does not pursue matters based on the whistleblower's indirect knowledge of agency wrongdoing or speculation about the existence of misconduct.

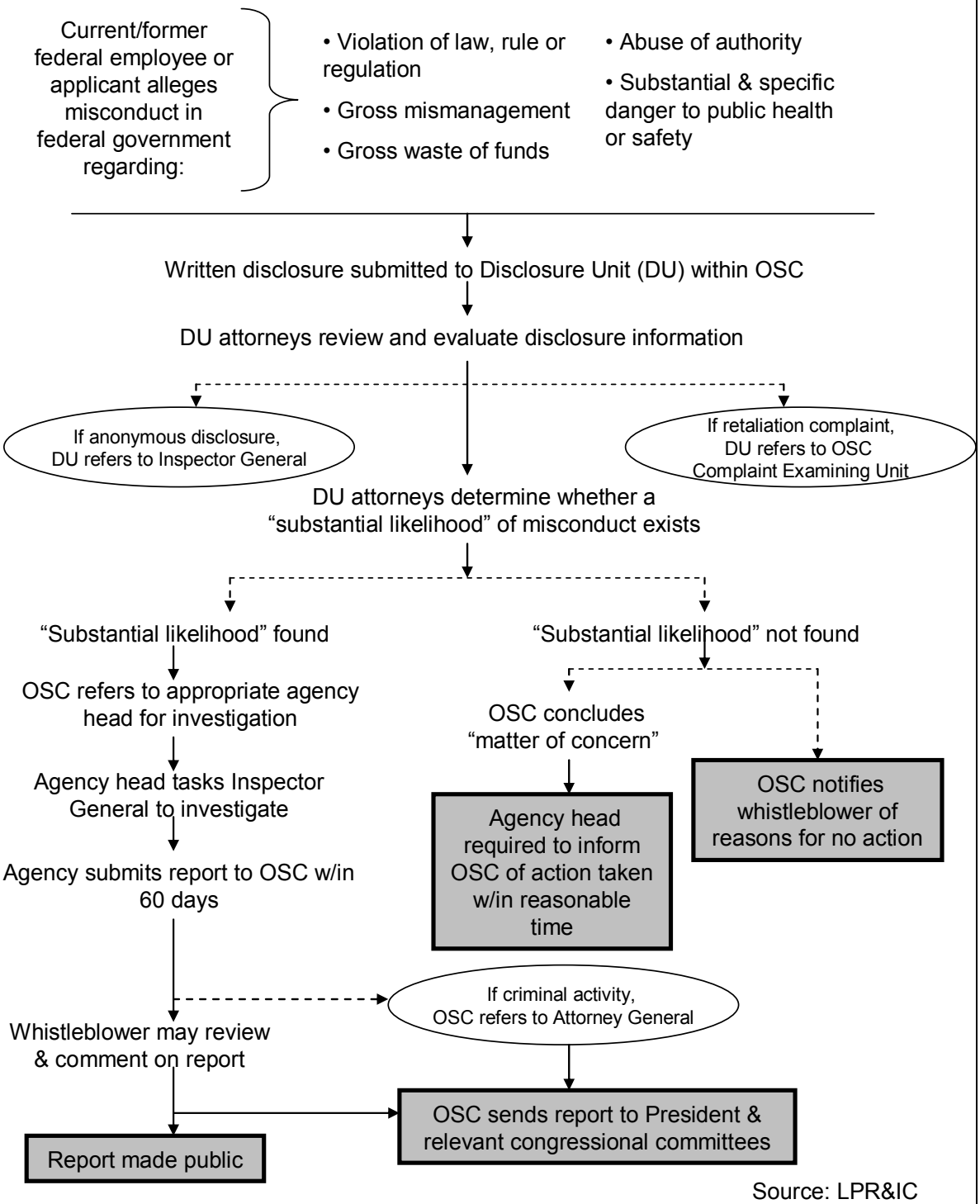
If the DU finds no substantial likelihood that the information disclosed wrongdoing, the whistleblower is notified of the reasons the disclosure may not be acted on further. However, the Special Counsel has the discretion, in cases where substantial likelihood is not found, to determine that a matter of concern has been raised. In these cases, the Special Counsel may transmit the whistleblower information to the agency head identified in the disclosure. The agency head is then required to respond to OSC in writing, within a reasonable time, what action has or will be taken, and when such action will be completed.

If there is a finding that a substantial likelihood exists, the DU will refer the disclosure to the appropriate agency head. The agency head is required to conduct an investigation and submit a written report on the findings to OSC. The OSC does not decide who within the agency will conduct the investigation. However, agency heads usually task their Office of Inspectors General with the responsibility for investigating OSC referrals.

The investigation must be completed and the findings reported back to OSC within 60 days. Federal law mandates that the agency head reviews and signs the report, which must include the basis for the investigation, the investigation method used, and a summary of the evidence gathered. The report must also outline any violations found and a description of any action to be taken.

The OSC reviews the report to determine whether it contains the statutorily mandated information and whether the report's findings appear to be reasonable. The whistleblower is also provided an opportunity to review and comment on the agency report. The Special Counsel then submits the report (with the whistleblower's comments) and the OSC recommendations to the President and the congressional committees with oversight responsibility for the agency involved. The OSC is also required make the report available to the public.

Figure IV-2. OSC's Disclosure Unit Whistleblower Process



Source: LPR&IC

If the report indicates evidence of criminal violation, it is not made available to the whistleblower or the public. Rather, the information is directed to the U.S. Attorney General and the President and the relevant federal oversight entities are notified.

Complaint Examining Unit (CEU). As noted earlier, federal law includes reprisal for whistleblowing as a prohibited personnel practice. Whistleblower retaliation complaints are handled by the Complaint Examining Unit within the OSC. The flowchart in Figure IV-3 illustrates the basic process for handling a federal whistleblower retaliation complaint.

Once a complaint has been referred to CEU, the assigned examiner makes a preliminary determination as to whether the complaint contains evidence of any prohibited retaliation activity warranting further inquiry by OSC. The examiner makes that determination by reviewing the information obtained through telephone or written communications with the complainant, any witnesses, and/or appropriate officials from the employing agency.

The examiner will then either recommend: 1) the case be referred to the OSC's Investigations and Prosecution Division (IPD) for further investigation and legal review, or 2) that the case be closed. If further inquiry is warranted, CEU provides written notification to the complainant. Otherwise, the complainant is provided a written explanation of the specific reasons for closing the case.

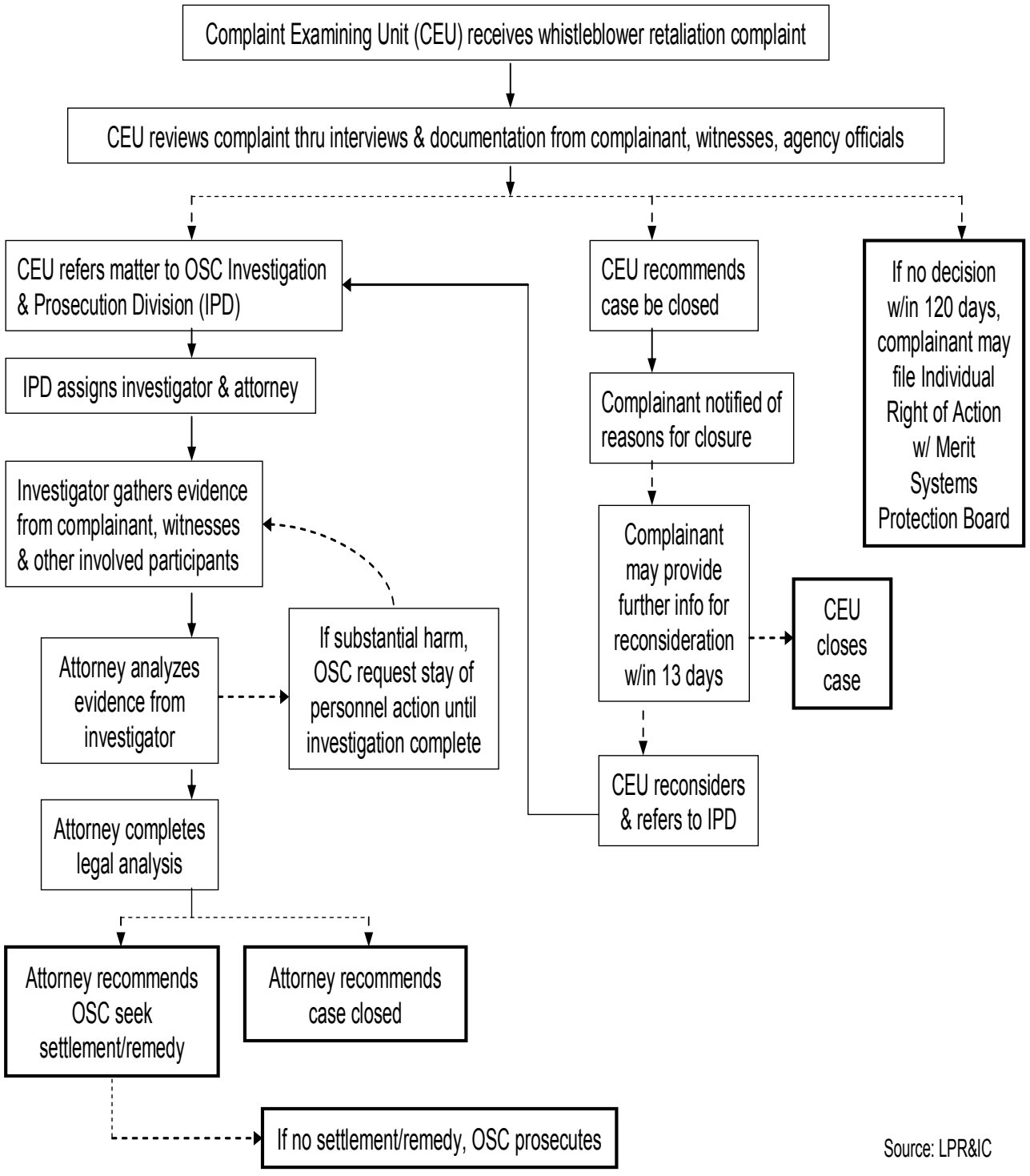
If a determination is not made within 90 days after CEU receives the retaliation complaint, the unit must provide the complainant with written complaint status, and every 60 days thereafter until a final determination is made. If OSC has not yet made a decision after 120 days, the complainant may file an Individual Right of Action (IRA) directly with the Merit Systems Protection Board (MSPB). (This process is discussed later.)

If the complainant disagrees with the CEU's preliminary determination to close the case, he or she may submit additional information for reconsideration within 13 days. After reviewing the response, the examiner determines whether the case merits further investigation, or whether it should be closed. In either case, OSC provides the complainant with written notification of the final determination.

Investigation and Prosecution Unit (IPD). As shown in Figure IV-3, if CEU decides to refer a retaliation complaint to IPD, an investigator and an attorney are assigned as a case team for further investigation and legal review. The investigator gathers and verifies evidence of the alleged retaliation while the attorney analyzes the evidence to see if OSC can prove that a violation of law or regulation occurred. All complainants must agree to the disclosure of their name and the information provided to OSC.

While the IPD process is pending, the case investigator or attorney must notify the complainant at least every 60 days of the complaint status. In certain circumstances, if IPD determines upon reasonable grounds that a prohibited personnel practice occurred or would cause substantial harm, it may seek a stay of the personnel action involved until the investigation is done or a final determination is made.

Figure IV-3. CEU Process for Whistleblower Retaliation Complaints



As part of the IPD review, the investigator conducts interviews in person or by telephone of any potential witnesses who have information relevant to the allegations. This includes individuals who have first hand knowledge of the issues and events, participated in the decisions, observed interactions, or have other knowledge necessary to a full understanding of the alleged violations of law being investigated. After the investigation is complete, the attorney will conduct a legal review of the collected information.

The attorney makes a recommendation after a review of the evidence and applicable law. The attorney will either recommend case closure because no further action is warranted, or recommend the Special Counsel pursue corrective action and/or disciplinary action, or negotiate a settlement. The IPD notifies the complainant of its decision and the underlying reasons. If the complainant disagrees with the decision, he or she has 13 days to provide additional information. If the complainant does not respond within the 13 day timeframe or does not provide a basis for OSC to change its determination, the case is closed.

If IPD finds there is evidence to support the allegations, OSC attempts to settle the complaint with the agency involved. The complainant is kept informed of the negotiation progress and OSC will not settle the complaint with the agency without the complainant's consent. However, if the complainant does not accept an offer of complete corrective action (that is, action that provides the complainant all the relief he or she is entitled to), OSC will end its efforts and close the case. If the agency does not take corrective action within a reasonable period of time, (usually 45-60 days) OSC will initiate litigation.

U.S. Merit Systems Protection Board (MSPB)

Under the Civil Service Reform Act of 1978, most federal employees may appeal various personnel actions affecting them to the U.S. Merit Systems Protection Board (MSPB).[19] The MSPB is an independent agency within the federal government that adjudicates individual federal employee appeals and conducts merit system studies. The board is composed of three presidential appointments that are confirmed by the Senate. No more than two board members can be from the same political party. The board has eight regional and field offices across the country to manage appeals.

The federal Whistleblower Protection Act allows current or former federal employees and applicants for employment who claim they were subjected to any adverse personnel action because of disclosure of whistleblower information to seek corrective action by appealing to MSPB. Such an appeal is known as an "individual right of action" (IRA) noted above in Figure IV-3. Individuals alleging whistleblower retaliation must first file a complaint with the Office of Special Counsel and exhaust OSC procedures before appealing to MSPB. The IRA may be filed either after OSC closes a matter in which reprisal for whistleblowing has been alleged; or if OSC has not notified the complainant within 120 days of receiving an allegation of whistleblower retaliation that it will seek corrective action.

[19] The board does not review cases from certain classes of employees (e.g., political appointments) and employees of specific agencies (e.g., Federal Bureau of Investigations).

A written appeal must be submitted to the administrative judge of the MSPB regional or field office serving the area where the employee was located when the action was taken. The appeal must be filed within 65 calendar days of the OSC notice date stating that it would not seek further action on the complaint. Legal representation is not required to file appeals with the board and appellants may represent themselves.

The filing of an appeal results in an acknowledgement order issued by the administrative judge. The order provides the parties with a copy of the appeal and directs the agency in question to submit a statement as to its reason for taking the personnel action or decision being challenged, along with all pertinent documents. An agency has 20 calendar days to respond.

The agency has the burden of proving that it is justified in taking the personnel action. If the burden of proof is met, the board must decide in favor of the agency, unless the appellant can show that either: 1) there was harmful error in the agency's procedures, 2) a prohibited personnel practice was the basis for the decision, or 3) the decision was not in accordance with the law.

After considering all of the relevant evidence, the administrative judge may affirm the agency's action, reverse the action, or in certain cases, mitigate or modify the penalty imposed by the agency. The administrative judge must issue a decision that identifies all material issues of fact and law, summarizes the evidence, resolves issues of credibility, and includes the administrative judge's conclusions of law and legal reasoning. The appellant may waive the right to a hearing and choose instead to have the case decided on the basis of the written record, which includes all pleadings, documents, and other materials filed in the proceedings.

The administrative judge's decision is final unless a party requests a review with the three-member MSPB board in Washington within 35 calendar days of the initial decision. The board will review only if: 1) there is new significant evidence not available when the record was closed, or 2) the administrative judge's decision is based on an erroneous interpretation of law or regulation. The board's decision on a petition for review constitutes final administrative action.

While the case is pending either before the administrative judge or under review by the MSPB, the administrative judge has the discretion to order interim relief until a final decision is made. Appeals may be settled voluntarily by the parties prior to an administrative judge's final decision. However, the parties must ask the administrative judge to enter the agreement into the record if they wish to have the settlement agreement enforced by the board.

The board may dismiss a petition if it determines that the matter is not within the board's jurisdiction or the petition was not filed within the required time limit and good cause for the untimely filing is not shown. The board may deny a petition if it does not meet the criteria for review. If the board grants a petition, its final decision may affirm or reverse the initial decision of the administrative judge, in whole or in part. If the appellant is dissatisfied with the final decision of the board, he or she may request a review of the final decision by the U.S. Court of Appeals. The court must receive the request within 60 days of the board's final decision.

Bargaining units. Employees who are members of a bargaining unit that is represented by a union or an association must file grievances in accordance with their negotiated grievance

procedure. If the employee's complaint is covered by a grievance procedure, then the employee has a choice between filing with the bargaining unit's grievance process or filing an appeal with the board, but not both.

Federal Office of Inspectors General (OIGs)

In 1978, the federal government established and authorized the Office of Inspectors General (OIGs) to detect and prevent fraud, waste, abuse and violations of law and to promote economy, efficiency and effectiveness in the operations of the federal government. A federal inspector general is an appointed investigator charged with examining the actions of a government agency as a general auditor to ensure agency operations are functioning in compliance with general established government policies. They also may discover possible misconduct or wrongdoing by individuals or groups related to the agency's operation. As noted earlier, the IGs are often given the job to investigate whistleblower complaints.

The President nominates IGs at cabinet-level departments and major agencies with Senate confirmation. These IGs can only be removed by the President. In certain designated agencies, the agency head may appoint and remove IGs. Congress must be notified of any IG removed by the President or an agency head. The appointments are based on demonstrated ability in accounting, auditing, financial analysis, law, management, public administration or investigations and not political affiliation. Currently, there are 67 statutory OIGs.

While IGs serve under the general supervision of an agency head or deputy, they cannot prevent or prohibit an IG from conducting an audit or investigation. OIG investigations may be internal (e.g. targeting government employees) or external (e.g. targeting grant recipients, contractors). To fulfill their responsibilities, IGs are authorized to:

- have direct access to all agency records and information,
- conduct independent and objectives audits and issue related reports as deemed appropriate (with limited national security and law enforcement exceptions),
- perform independent investigations as requested by the agency head,
- issue subpoenas for documents outside the agency (with same limited exceptions), and
- hire and direct their own staff and contract resources.

IGs must dually report their activities to the agency head or deputy and to Congress. The IGs also must report any unreasonable refusal within the agency to provide information as well as any suspected violation of federal criminal law to the U.S. Attorney General. Although all of the federal OIGs operate separately, they share information and some coordination and training through the Council of the Inspector General on Integrity and Efficiency (CIGIE).[20]

[20] CIGIE was created in 2008 pursuant to the Inspector General Reform Act of 2008 which combined the former President's Council on Integrity and Efficiency with the Executive Council on Integrity and Efficiency.

APPENDICES

APPENDIX A
Legislative History of C.G.S. § 4-61dd

P.A. 79-599

This act allowed the Attorney General to investigate information transmitted to him by state employees concerning alleged corruption, unethical practices, violations of state laws or regulations, mismanagement, gross waste of funds, abuse of authority, or danger to public safety occurring in any state department or agency. Appointing authorities are prohibited from taking, or threatening to take, retaliatory action against a state employee who transmits such information.

The Attorney General is prohibited from disclosing the records of an investigation or the identity of an employee who gives him information, unless the employee consents to disclosure or unless the Attorney General determines during the investigation that disclosure is unavoidable.

The act gives the Attorney General the power to summon witnesses, require the production of necessary books, papers, or other documents and administer oaths for an investigation. Upon the conclusion of an investigation, the Attorney General must, if he deems it necessary, report his findings to the Governor, or to the Chief State's Attorney in matters involving criminal activity.

P.A. 83-232

The state employees' "whistle blowing" law authorizes a state employee to transmit to the Attorney General, who is to conduct such investigation as he deems proper, any knowledge he has of corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority, or danger to the public safety in any state department or agency.

This act revises the law by:

- Allowing a former state employee or state employees' bargaining representative acting on behalf of himself, a current employee, or a former employee to bring allegations to the Attorney General's attention (formerly only a current state employee was allowed to make allegations to the Attorney General);

- Requiring the Attorney General to report to a complainant, upon request, the actions taken of his investigation;

- Prohibiting any state officer or employee from taking any retaliatory action against a state employee who discloses information to the Attorney General (formerly only an employee's appointing authority was prohibited from taking retaliatory action) and allowing an employee to appeal any such action; and

- Authorizing an appointing authority to take disciplinary action, including dismissal, against an employee who knowingly and maliciously made false charges to the Attorney General, and allowing an employee to appeal such actions.

P.A. 85-559

Among various other things, this act:
- establishes an Office of the Inspector General,
- transfers the responsibility to conduct "whistle blowing" investigations from the Attorney General to the Inspector General,
- modifies the reporting procedures and follow-up activities of the auditors of public accounts, and
- provides for confidentiality of records and public employees' information.

P.A. 87-442

This act repeals the law establishing the Office of the Inspector General and transfers the office's employees and records to the Attorney General. The inspector general's powers relating to whistleblowers are transferred to the auditors and the attorney general. All permanent employees of the inspector general and all records, including those pending investigations, are to be transferred to Attorney general.

This act allows any person instead of any present or former employee to report improper conduct. The act established the current whistleblower process of having disclosure first to auditors who after review forward to the attorney general. The act eliminates the provision for any report to complainant.

P.A. 89-81

This act puts a five year limit on the time that the auditors of public accounts must retain their reports in their office, but requires them to file copies of all reports with the state librarian. It requires the auditors to report instances of wrongdoing to the house and senate clerks, both individually and in annual summary form. It also made several minor substantive and technical changes to the auditors' authority.

P.A. 97-55

This act applies the whistleblower protection law to misfeasance alleged to have occurred in a quasi-public agency. It extends to employees of quasi-public agencies the same whistleblower protections state employees have and prohibits quasi-public agency officers and employees from retaliating against a state of quasi-public agency employee from making such a disclosure.

P.A. 98-191

This act extends the whistleblower law that applies to state and quasi-public agencies to entities that enter large state contracts with such agencies. Specifically, it authorizes:

- Anyone who knows of corruption, state or federal law or regulation violations, gross waste of funds, abuse of authority, or public endangerment by a large state contractor to contact the state auditors and
- Whistleblowers threatened with personnel action in retaliation for disclosing such information to bring a civil action in superior court after exhausting administrative remedies.

Large state contracts are defined as one valued at $5 million or more between any entity and a state or quasi-public agency. Contracts to construct, alter, or repair public buildings or public works are excluded.

The act establishes a penalty for large state contractors who retaliate against whistleblowers. Penalties must be included in the contract and contractors are required to post a notice of the whistleblower provisions in a conspicuous place that is readily available for employee viewing.

The act also requires employers, before disciplining employees for making false complaints, to show that the employee did so knowingly and maliciously rather than just to know the allegations were false.

P.A. 02-91

This act establishes a new, alternative process for disposing of allegations of retaliation filed by employees of the state, quasi-public agencies, and large state contractors who have made whistleblower complaints against their employers. It requires the chief human rights referee to adopt regulations that establish the procedure for filing complaints and noticing and conducting hearing under the new process. Finally, it creates a rebuttable presumption that any personnel action taken or threatened against an employee who makes a whistleblower complaint is retaliatory if it occurs within one year of the complaint.

P.A. 04-58

This act made minor and technical corrections.

P.A. 05-287

Among various changes affecting state contracts, this act:

- Requires the attorney general consult with the auditors prior conducting a whistleblower investigation and requires him to get the concurrence and assistance of the auditors before proceeding,

- Allows the auditor and the attorney general to withhold the investigation records while the investigation is pending,

- Extends whistleblower protection to disclosures by a contractor

- Protects disclosures to (1) the agency where the state officer or employee works, (2) a state agency pursuant to a mandated reporter statute; or (3) in the case of a large state contractor, an employee of the contracting state agency concerning information about the large state contract,

- Extends the whistleblower law to contracts for at least $5 million with a state or quasi-public agency to construct, alter, or repair a public building or public work,

- Requires an employee or his attorney to file a retaliatory complaint with a chief referee within 30 days after learning of the specific incident giving rise to a claim that a personnel action has occurred or been threatened,

- Allows the affected agency, contractor, or subcontractor to recover damages, attorney's fees, and costs resulting from retaliatory action taken or threaten that impedes, cancels, or fails to renew a contract between a state agency and a large state contractor or a large state contractor and its subcontractor in a civil action filed within 90 days of learning of the action, threat, or failure to renew,

- Extends monetary penalties to retaliations against the contractor's employees for disclosing information to the contracting state or quasi-public agency's employees, and

- Prohibits anyone from being held liable for civil damages as a result of his good faith disclosure of information to the auditors or the attorney general.

P.A. 06-196

This act made a number of technical and conforming changes.

Source: OLR Public Act Summaries

Appendix B
Description of Connecticut's Former Office of the Inspector General

Enacted with the passage of Public Act 85-559, the Office of the Inspector General was established under the Joint Committee on Legislative Management and was created to prevent and detect fraud, waste, and abuse in the management and use of state personnel, property, and state and federal funds. The office was authorized to evaluate the performance of state agencies.

Organization. The Auditor of Public Accounts appointed the Inspector General from a list of three candidates submitted by a 10- member committee composed of the:

- President Pro tempore of the Senate and Speaker of the House,
- minority leaders of the Senate and House,
- co-chairmen and ranking members of the executive and legislative nominations committee, and
- chairmen of the legislative program review committee.

The auditors had 90 days to make a selection, after which time the committee made the appointment by majority vote. The appointment was to be made with the advice and consent of the general assembly. The appointment was to be based on integrity and competence in appropriate fields. The Inspector General would serve a five year term, until a successor takes office, unless removed for just cause by the auditors. The inspector general would be able to hire necessary staff within the office budget. The budget submitted by the Inspector General would be forwarded unaltered by the Governor to the General Assembly for approval.

Powers. The Inspector General had access to all records, data, and material maintained by or available to any governmental agency or to any person or organization administering public funds, property, or personnel. He could apply to a panel of three superior court judges to have a subpoena issued to obtain necessary information not otherwise available. Anyone subpoenaed by the Inspector General could appeal to the superior court. The Inspector General was authorized to adopt rules and regulations necessary for the administration of the office or for the implementation of provisions.

Duties. The Inspector General was required to conduct "preemptive" inspections or investigations of programs related to the collection, administration, or disposition of public funds, owned or leased property, or of the delegation or performance of a state agency's duties. He was also required to report to the Governor, legislative program review committee, and the appropriations committee on the activities of the office on or before October 31, 1986 and by October 31 of each year thereafter.

The efforts of all state officials and staff charged with similar evaluation duties must be coordinated with the Inspector General's office. The internal audit staff which operated within state agencies remained assigned to their respective agencies, but the Inspector General approved each annual internal audit program.

The Inspector General was required to report findings and recommendations to the Chief State's Attorney or State Ethics Commission, the Attorney General, the U.S. Attorney, or an appropriate municipal authority, depending on the nature of the possible violation or civil action. The Inspector General was permitted to:

- make recommendations concerning detection and prevention of waste, fraud, and abuse to the Governor, the General Assembly, and Program Review
- assist any state agency or employee collecting, spending, or controlling public funds or property
- request assistance from any such agency or employee, and
- issue any necessary reports in addition to those required.

The Inspector General's powers and duties included:

- detecting and preventing fraud, waste, and abuse in state personnel and property, and state and federal funds
- evaluating the economy, efficiency, and effectiveness of state agencies,
- investigating the administration of public funds and state-owned or leased property, and state agency performance,
- having access to all agency records and
- reporting findings and recommendations to the Governor, General Assembly, Program Review, Chief State's Attorney, State Ethics Commission, Attorney General, U.S. Attorney, and appropriate municipal authorities.

Source: OLR Public Act Summary of Public Act 85-559

APPENDIX C
Statutory Provisions of C.G.S. § 4-61dd

Sec. 4-61dd. Whistleblowing. Disclosure of information to Auditors of Public Accounts. Investigation by Attorney General. Proceedings re alleged retaliatory personnel actions. Report to General Assembly. Large state contractors. (a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section. Upon the conclusion of the investigation, the Attorney General shall where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. In addition to the exempt records provision of section 1-210, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section, disclose the identity of such person without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.

(b) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to (A) an employee of the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (B) an employee of the state agency or quasi-public agency where such state officer or employee is employed; (C) an employee of a state agency pursuant to a mandated reporter statute; or (D) in the case of a large state contractor, an employee of the contracting state agency concerning information involving the large state contract.

(2) If a state or quasi-public agency employee or an employee of a large state contractor alleges that a personnel action has been threatened or taken in violation of subdivision (1) of this subsection, the employee may notify the Attorney General, who shall investigate pursuant to subsection (a) of this section.

(3) (A) Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183.

(B) The Chief Human Rights Referee shall adopt regulations, in accordance with the provisions of chapter 54, establishing the procedure for filing complaints and noticing and conducting hearings under subparagraph (A) of this subdivision.

(4) As an alternative to the provisions of subdivisions (2) and (3) of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract; or (B) an employee of a large state contractor alleging that such action has been threatened or taken may, after exhausting all available administrative remedies, bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

(5) In any proceeding under subdivision (2), (3) or (4) of this subsection concerning a personnel action taken or threatened against any state or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs not later than one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

(6) If a state officer or employee, as defined in section 4-141, a quasi-public agency officer or employee, an officer or employee of a large state contractor or an appointing authority takes or threatens to take any action to impede, fail to renew or cancel a contract between a state agency

and a large state contractor, or between a large state contractor and its subcontractor, in retaliation for the disclosure of information pursuant to subsection (a) of this section to any agency listed in subdivision (1) of this subsection, such affected agency, contractor or subcontractor may, not later than ninety days after learning of such action, threat or failure to renew, bring a civil action in the superior court for the judicial district of Hartford to recover damages, attorney's fees and costs.

(c) Any employee of a state or quasi-public agency or large state contractor, who is found to have knowingly and maliciously made false charges under subsection (a) of this section, shall be subject to disciplinary action by such employee's appointing authority up to and including dismissal. In the case of a state or quasi-public agency employee, such action shall be subject to appeal to the Employees' Review Board in accordance with section 5-202, or in the case of state or quasi-public agency employees included in collective bargaining contracts, the procedure provided by such contracts.

(d) On or before September first, annually, the Auditors of Public Accounts shall submit to the clerk of each house of the General Assembly a report indicating the number of matters for which facts and information were transmitted to the auditors pursuant to this section during the preceding state fiscal year and the disposition of each such matter.

(e) Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section, the contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

(f) Each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

(g) No person who, in good faith, discloses information to the Auditors of Public Accounts or the Attorney General in accordance with this section shall be liable for any civil damages resulting from such good faith disclosure.

(h) As used in this section:

(1) "Large state contract" means a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more; and

(2) "Large state contractor" means an entity that has entered into a large state contract with a state or quasi-public agency.

(P.A. 79-599, S. 1, 2; P.A. 83-232; P.A. 85-559, S. 5; P.A. 87-442, S. 1, 8; P.A. 89-81, S. 3; P.A. 97-55; P.A. 98-191, S. 1, 2; P.A. 02-91, S. 1; P.A. 04-58, S. 1, 2; P.A. 05-287, S. 47; P.A. 06-196, S. 26.)

History: P.A. 83-232 amended Subsec. (a) to authorize a former state employee or state employee bargaining representative to disclose information and to require the attorney general to report to the complainant his findings and any actions taken, amended Subsec. (b) to prohibit retaliatory action by "any state officer or employee" and to provide that an employee may file an appeal if retaliatory action is threatened or taken, and added Subsec. (c) re sanctions for an employee who makes false charges; P.A. 85-559 required that state employees report to inspector general rather than to attorney general and that findings be reported in accordance with Sec. 2-104(b) rather than to governor or chief state's attorney as was previously the case; P.A. 87-442, in Subsec. (a), substituted "person" for "state employee, former state employee or state employee bargaining representative acting on behalf of any state employee or former state employee or on his own behalf", authorized any such person to transmit facts and information to auditors of public accounts, instead of to inspector general, required auditors to review matter and report to attorney general, required attorney general to make investigation and auditors to assist at his request, required attorney general, instead of inspector general, to report findings to governor or chief state's attorney, instead of to complainant, and applied provisions re nondisclosure of identity of person to auditors and attorney general instead of to inspector general and limited applicability of such provisions to receipt of information under this section, instead of this section or Sec. 1-19(b) and, in Subsec. (b), substituted "auditors of public accounts or attorney general" for "inspector general" and limited applicability of provisions of Subsec. to disclosure of information under provisions of this section instead of this section and Sec. 1-19(b); P.A. 89-81 added Subsec. (d) requiring annual report by auditors to general assembly on matters transmitted to them under this section; P.A. 97-55 applied section to quasi-public agencies; P.A. 98-191 applied section to large state contractors, effective July 1, 1998 (Revisor's note: P.A. 88-230, 90-98, 93-142 and 95-220 authorized substitution of "judicial district of Hartford" for "judicial district of Hartford-New Britain" in public and special acts of the 1998 session of the General Assembly, effective September 1, 1998); P.A. 02-91 substantially revised Subsec. (b) procedures re alleged retaliatory personnel actions by designating existing provisions as Subdivs. (1) and (4), adding Subdivs. (2) and (3) re investigation by Attorney General and complaints to Chief Human Rights Referee, adding provision in Subdiv. (4) re existing procedure for employee appeals and civil actions as alternative to provisions of Subdivs. (2) and (3), adding Subdiv. (5) providing, in proceedings under Subdivs. (2), (3) and (4), for a rebuttable presumption that certain personnel actions are retaliatory and making conforming and technical changes, and made technical change in Subsec. (e), effective June 3, 2002; P.A. 04-58 made technical changes in Subsecs. (a) and (c); P.A. 05-287 made technical and conforming changes throughout the section, amended Subsec. (a) to authorize the Attorney General to conduct any investigation deemed proper based on any other information that may be reasonably derived from the report, require the Attorney General to consult with the Auditors of Public Accounts re the relationship of such other information to the report and authorize the withholding of records from such investigation during the pendency of such investigation, amended Subsec. (b) to insert

clause designators, include contractors in the list of protected persons and provide protection for disclosure to state agencies in Subdiv. (1), designate new Subdiv. (3)(A) re complaints by state or quasi-public agency employees and employees of large state contractors, redesignate existing Subdiv. (3) as Subdiv. (3)(B) and add Subdiv. (6) re action by a state officer or employee, quasi-public agency officer or employee, or employee or officer of a large state construction contractor to impede, fail to renew or cancel a contract, amended Subsec. (e) re disclosure to any employee of the contracting state or quasi-public agency, added new Subsec. (g) re good faith disclosures to the Auditors of Public Accounts or the Attorney General, redesignated existing Subsec. (g) as Subsec. (h) and amended same by redefining "large state contract" in Subdiv. (1), effective July 13, 2005; P.A. 06-196 made technical changes in Subsec. (b), effective June 7, 2006.

APPENDIX D
Listing of Attorney General Formal Reports Issued Between January 1, 2006 and June 6, 2009

Date Issued		Report Name
2008	October	Report on the Investigation of Lake Grove at Durham
	September	Alleged Political Activity Using State Time and Resources by Employees of the Office of the Governor
	January	Loss Portfolio Arrangement
2007	May	Report on the Allegations of Retaliation against Sgt. Andrew Matthews of the Connecticut State Police
	March	Allegations of Financial Irregularities, Misuse of State Funds and Mismanagement at the Highville Mustard Seed Charter School
	March	Report on the State Department of Education Technical High School System Disclosure of Teachers' Social Security Numbers
	February	Report on the Allegations of Misconduct at Bridgeport Probate Court
2006	December	Report on the Evaluation of the Connecticut Department of Public Safety Internal Affairs Program
	December	Report on the Evaluation of the Connecticut Department of Public Safety Internal Affairs Program: Case Evaluations on Whistleblower Complaints
	May	Central Connecticut State University Allowing Its Vice President for Student Affairs to Reside in an On-Campus Residence Hall
Source: Office of the Attorney General		

APPENDIX E

State Agencies with 10 or More Whistleblower Complaints Filed with State Auditors (2002- June 2009)

AGENCY	2002	2003	2004	2005	2006	2007	2008	2009	TOTAL
Motor Vehicles	-	-	1	1	2	3	4	-	11
Economic Development	2	1	3	3	-	2	-	2	13
Labor	1	4	1	3	1	-	1	2	13
Military	2	4	1	1	1	3	2	-	14
Veteran	2	3	1	3	1	-	3	1	14
Public Works	1	2	1	3	2	4	2	1	16
Human Rights & Opportunities	3	1	-	-	-	9	5	-	18
BESB	4	4	1	3	1	4	1	2	20
Community Colleges	2	2	-	2	6	5	4	3	24
Administrative Services	3	1	2	11	-	1	4	2	24
Developmental Services	2	2	3	4	6	2	4	4	27
UCONN	2	3	2	5	7	6	3	1	29
Education	3	3	2	11	6	2	3	1	31
Public Health	2	1	11	2	2	8	7	4	37
CT State University System	3	4	3	10	4	6	3	4	37
Transportation	1	4	4	10	6	7	4	2	38
Environmental Protection	4	6	11	4	3	6	3	3	40
Mental Health & Addiction Services	5	10	3	5	4	3	7	4	41
Public Safety	-	1	2	4	4	11	11	9	42
Judicial	3	4	1	5	3	9	12	6	43
UCONN Health Center	3	6	3	9	1	7	5	12	46
Correction	2	5	2	10	9	7	9	9	53
Social Services	6	4	6	10	9	7	5	6	53
Children & Families	4	11	6	10	9	5	9	8	62
Source: State Auditors Whistleblower Database									

APPENDIX F
Retaliation Complaints Filed with State Auditors (2002- June 2009)

AGENCY	2002	2003	2004	2005	2006	2007	2008	2009	TOTAL
Environmental Protection	-	1	-	-	-	-	-	-	1
Human Rights & Opportunities	-	-	-	-	-	1	-	-	1
CT State University System	-	-	-	1	-	-	-	-	1
Transportation	-	-	-	1	-	-	-	-	1
Policy & Management	-	-	-	-	1	-	-	-	1
Community Colleges	-	-	-	-	1	-	-	-	1
UCONN	-	-	-	-	-	-	1	-	1
Public Health	-	-	-	-	-	-	1	-	1
Developmental Services	-	-	-	-	-	-	-	1	1
Labor	-	-	-	-	-	-	-	1	1
BESB	-	1	-	-	-	-	-	1	2
Children & Families	-	-	-	1	1	-	-	1	3
Judicial	-	-	-	-	1	-	-	2	3
Education	-	-	-	3	-	-	1	-	4
UCONN Health Center	-	-	-	2	-	-	-	2	4
Public Safety	-	-	-	-	-	-	1	4	5
Correction	-	-	-	3	1	-	1	-	5
Mental Health & Addiction Services	-	3	-	2	-	-	1	1	7
Large State Contractor	-	-	-	-	3	2	2	3	10
TOTAL	-	5	-	13	8	3	8	16	53
Source: State Auditors Whistleblower Database									

APPENDIX G
Retaliation Complaints Filed with the Chief Human Rights Referee (2003- August 26, 2009)

Named Entity	2003	2004	2005	2006	2007	2008	2009	TOTAL
Comptroller	-	1	-	-	-	-	-	1
Developmental Services	-	-	1	-	-	-	-	1
Military	-	-	-	-	-	1	-	1
Administrative Services	-	-	-	-	-	1	-	1
Social Services	-	-	-	-	-	1	-	1
Transportation	-	-	-	-	-	1	-	1
Latino Commission	-	-	-	-	-	-	1	1
Public Health	-	-	-	-	-	2	-	2
BESB	-	-	-	-	1	1	-	2
Environmental Protection	-	-	-	-	1	1	-	2
Human Rights & Opportunities	-	-	-	1	1	-	-	2
Labor	-	-	-	-	1	1	-	2
UCONN	-	-	-	2	-	1	-	3
UCONN Health Center	-	-	-	-	-	3	1	4
CT State University System	1	-	1	1	-	-	1	4
Motor Vehicles	-	-	-	4	-	-	-	4
Mental Health & Addiction Services	3	-	-	1	-	2	-	6
Public Safety	-	-	-	2	4	-	-	6
Judicial	-	1	-	1	1	4	-	7
Correction	1	-	1	-	3	2	2	9
Municipal Entity*	-	1	1	6	-	5	2	15
Large State Contractor*	-	-	2	4	4	7	6	23
*Complaints filed are against separate entities Source: LPR&IC Analysis of Human Rights Referees' Whistleblower Retaliation Decisions								